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December 18, 2008

By Hand

Anne K. Quinlan, Esq.
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: STB No. 42112, *E.I. DuPont de Nemours and Company v. CSX Transportation*

Dear Secretary Quinlan:

Enclosed, for the Board's use in the above-referenced matter, please find ten paper copies of the Public Version of Defendant CSX Transportation Inc.'s Reply to DuPont's Petition. While we filed paper copies of the Highly Confidential of the CSXT Reply with the Board yesterday (December 17, 2008), and filed and served electronic copies of both the Highly Confidential and Public versions, we did not provide an additional ten paper copies of the Public Version to the Board with our paper filing yesterday. For the Board's convenience, we are providing the enclosed ten paper copies this morning.

Thank you for your assistance in this matter. If you have questions, please contact the undersigned.

Very truly yours,

Paul A. Hemmersbaugh

Enclosures

cc: Nicholas DiMichael

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PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

RECEIVED
DEC 18
MANAGEMENT
STB

E.I. DUPONT DE NEMOURS AND CO.	)	
Complainant,	)	Docket No. NOR 42112
v.	)	
CSX TRANSPORTATION, INC.	)	
Defendant	)	

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Office of Proceedings
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Public Record

CSXT'S REPLY TO DUPONT'S PETITION FOR INJUNCTIVE RELIEF

Defendant CSX Transportation, Inc. ("CSXT") hereby submits its Reply to Complainant E.I. DuPont de Nemours and Company's ("DuPont") Petition for Injunctive Relief. DuPont has failed to establish any of the essential elements necessary to grant the extraordinary remedy of a preliminary injunction. and the Petition should be denied.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Petition's claims of irreparable harm faced by DuPont are greatly exaggerated. DuPont could easily absorb the additional costs of three challenged rates without resorting to [ ], and it does not claim otherwise. Nor could it. Two days after filing the Petition, DuPont announced its plan to generate an additional $1.2 *billion* in free cash flow, resulting in total free cash flow of $2.5 billion in 2009. *See* Exhibit 2, DuPont News Release, "DuPont Takes Aggressive Actions to Strengthen Competitiveness and Increase Cash

Flow" (Dec. 4, 2008).[1] The amount of CSXT's lawfully established rates that DuPont seeks to suspend is less than [ ] percent of that 2009 free cash flow. DuPont's Petition is a blatant attempt to avoid standard costs of rate litigation by shifting those costs to CSXT. DuPont may not wish to finance the litigation that it elected to bring, but that is no reason to allow it to enlist the Board's aid to force Defendant CSXT to underwrite those costs.

* * * *

For many years, CSXT moved DuPont's traffic – covering hundreds of origin-destination pairs and numerous commodities – pursuant to a series of long-term omnibus rail transportation contracts. Despite extensive negotiations over a period of several years, the parties have been unable to reach agreement on a new contract to replace the one that expired on June 15, 2007. In October 2007, DuPont filed three rate reasonableness cases under the Board's new Three Benchmark method for "small cases," challenging CSXT's rates for movements between seven selected origin-destination pairs. As the Board will recall, CSXT objected that DuPont's small case challenges constituted inappropriate disaggregation of a much larger rate dispute in an effort to take advantage of the Three Benchmark procedures. The Board issued decisions in the three cases at the end of June 2008, and those decisions are presently on appeal to the Court of Appeals for the D.C. Circuit. *See E.I. DuPont de Nemours and Company v. CSX Transp., Inc.*, STB Docket Nos. 42099, 42100, and 42101 (served June 30, 2008).[2]

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[1] One of DuPont's actions to increase its cash flow was a "restructuring plan" through which it will eliminate the jobs of approximately 2,500 employees. *See id.* at 2. Despite the Petition's claim that [ ] it is significant that no DuPont employees at the Edge Moor facility were laid off. *See* Exhibit 3, Delaware Online, "Edge Moor Pigment Plant Avoids Layoffs" (Dec. 5, 2008), *http:www.delawareonline.com* (quoting plant manager as stating the layoffs had "no impact on our DuPont employees" at Edge Moor).

[2] The Board has filed a motion requesting that the U.S. Court of Appeals for the D.C. Circuit remand these cases for the Board to make changes that may have a "material effect" on the

In response to DuPont's request, CSXT provided common carrier rates to DuPont in September 2008.[3] On November 10, 2008, DuPont filed a SAC Complaint challenging CSXT's common carrier rates for 99 lanes, including at least one lane whose rate it had challenged unsuccessfully in the small cases decided four months earlier. The filing of this case confirms what CSXT had maintained all along – DuPont selectively disaggregated several lanes from a single large dispute in order to take advantage of the Three Benchmark proceedings, which the Board designed and intended only for truly small disputes. Notably, the Complaint does not allege that any of the challenged rates threatened DuPont with irreparable harm, and did not seek to enjoin or suspend the challenged rates. *See* Complaint, STB Docket No. 42112, *E.I. DuPont de Nemours & Co. v. CSX Transportation, Inc.* (filed Nov. 10, 2008). At the same time DuPont filed its Complaint, it served extensive discovery requests. CSXT filed its Answer on December 1, 2008. DuPont filed an Amended Complaint yesterday, December 16, 2008.[4]

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outcome of those cases. *See* Motion of the Surface Transportation Board to Remand for Further Board Proceedings, *CSX Transp. v. Surface Transportation Board*, D.C. Cir. Nos. 08-1246, 08-1247, 08-1248 (filed Nov. 25, 2008). The motion is pending before the Court of Appeals.

[3] From the expiration of the parties' last contract through November 2008, DuPont's traffic moved under "Private Price Lists," private rates that apply only to DuPont movements.

[4] CSXT has not yet had an opportunity to fully review the revised complaint. *See* First Amended Complaint, *DuPont v. CSXT*, STB Dkt. No. 42112 (Dec. 16, 2008) ("Amended Complaint"). Based on CSXT's initial review and DuPont's representations, however, it appears that the Amended Complaint drops its challenge to certain lanes included in the original Complaint (including a lane over which the Board found CSXT does not have market dominance in the Three Benchmark decisions less than six months ago), and adds several other lanes. DuPont also states that it has "corrected" 23 of the challenged rates and made unspecified corrections and updates to variable cost and R/VC calculations. Significantly, despite the fact that DuPont filed the present Petition two weeks ago, the Amended Complaint still contains no allegation whatsoever claiming that the challenged rates will cause DuPont (or anyone else) irreparable harm. Nor does it seek any relief under 49 U.S.C. § 721(b) or make any suggestion that such extraordinary relief is either sought or warranted. *See* Amended Complaint. Because DuPont has not amended or withdrawn its Petition, it appears that DuPont's position is that the Amended Complaint does not affect its arguments or the relief it seeks. CSXT does not necessarily agree with that position, and reserves the right to submit additional evidence or argument based on the Amended Complaint, if necessary.

DuPont has known CSXT's current common carrier rates since September, well before it filed its Complaint. At no time – including the "meet-and-confer" conference between counsel required by the Board's rules – did DuPont advise CSXT that it believed suspension of any of CSXT's rates was appropriate or that DuPont believed CSXT's common carrier rates would cause DuPont irreparable harm.

The Three Rates DuPont Seeks to Suspend Do Not Threaten DuPont with Irreparable Harm.

DuPont has now filed a Petition for Injunction, claiming for the first time that three of the challenged rates would cause it irreparable harm and seeking to enjoin CSXT from collecting its lawfully established rate. *See* Petition for Injunctive Relief (filed Dec. 2, 2008).[5] DuPont seeks this unprecedented pre-adjudication rate suspension before it has established that the Board has jurisdiction over those rates and despite Congress' elimination of the authority to suspend rates in ICCTA, the statute that created the STB and its enumerated powers. As CSXT demonstrates below, there is no basis in law or equity to grant the unprecedented rate suspension DuPont seeks in the Petition.

Complainant DuPont is a diversified global chemical and manufacturing company with operations in 70 countries and assets of approximately $38 billion. In 2007, DuPont generated net income of approximately $ 3 billion. *See* Exhibit 4. In the first three quarters of 2008, DuPont's net income was approximately $2.6 billion, an increase of approximately $200

[5] DuPont is again attempting to selectively disaggregate parts of the parties' overall dispute in order to seek special treatment and gain a litigation advantage. Moreover, despite having known the applicable rates for nearly three months, and having filed extensive discovery requests against CSXT in early November, DuPont waited until December to advise the Board and CSXT that it believed CSXT's rates would cause DuPont irreparable harm. Although this timing might otherwise suggest DuPont only recently discovered the "emergency" it claims would justify an unprecedented pre-adjudication injunction, the 37 pages of verified statements from four DuPont managers, an Occidental Chemical vice president, and an outside economic consultant show that DuPont had been planning and developing this tactic for some time.

million over the same period last year. *See* Exhibit 5. Last week, DuPont paid a quarterly dividend of $.41 per share to common stockholders, the fifth quarter in a row that DuPont has paid a dividend in this amount, and the *417th consecutive* quarterly dividend DuPont has paid to its shareholders.[6] *See http://phx.corporate-ir.net/phoenix.zhtml?c=73320&p=irol-dividends* (last visited Dec. 17, 2008). Based on DuPont's SEC 2008 filings, those dividends have amounted to approximately $370 million per quarter, or $1.48 *billion* in 2008 alone. *See* Exhibit 5. Given DuPont's robust performance, its claim that CSXT's rail transportation rate increases for three specific movements – which by DuPont's estimates average slightly more than $ [ ] per year (less than [ ] of the dividends it paid this year) – will cause DuPont irreparable harm, are entirely incredible.

Few equitable principles are better established than the rule that economic injury does not constitute "irreparable harm" that is required for the extraordinary remedy of a preliminary injunction. Indeed, because economic injury can be fully remedied by the award of monetary damages, such injury is the quintessential *reparable* harm, which may not serve as a basis for equitable preliminary relief. In the present motion, the harm DuPont alleges is not only entirely economic, it is also quite small in relation to DuPont's financial strength and wherewithal. And, at the conclusion of this rate case, DuPont is entitled to recover any and all amounts by which the Board may determine it was overcharged, plus interest. Simply put, DuPont faces no imminent irreparable harm as a result of CSXT's lawfully established common carrier rates, and any contrary claim is absurd.

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[6] *See* Exhibit 6, "DuPont Declares Fourth Quarter Dividend," (DuPont news release, available at: *http://vocuspr.vocus.com/VocusPR30/Newsroom/Query.aspx?SiteName=DupontNew&Entity=PRAsset&SF_PRAsset_PRAssetID_EQ=111212&XSL=PressRelease&Cache=False).*

On the other hand, CSXT would be harmed if the Board were to suspend CSXT's rates as DuPont requests. CSXT established the challenged rates in an exercise of its statutory right to determine and collect common carrier rates, a right commensurate with its obligation to provide common carrier service to anyone upon reasonable request. *See* 49 U.S.C. § 10701(c). If the Board grants the Petition and suspends CSXT's rates during the pendency of this proceeding, and ultimately finds those rates are not unreasonable, CSXT will have been erroneously deprived of its statutory ratemaking right and resulting revenues, and it may or may not be adequately compensated for that injury.[7] While complainants are entitled to reparations for overpayments in the event the Board finds the challenged rates exceed a maximum reasonable level, carriers do not have the reciprocal right to obtain reparations for undercharges when the Board finds a rate does not exceed a maximum reasonable limit. *See, e.g., Arizona Grocery Co. v. Atchison, Topeka & Santa Fe Ry. Co.*, 284 U.S. 370, 387-88 (1932).

DuPont's Indefinite Allegations About the Economic Difficulties of Two of its Facilities.

Perhaps recognizing the implausibility of a claim that *DuPont* would be irreparably injured by paying the three challenged rates, the Petition asserts that two DuPont

[7] DuPont indicates it would be willing to "keep account" of the amounts it would withhold during the pendency of its challenge. Then at the conclusion of the proceeding, DuPont would "refund the appropriate amount to CSXT." Petition at 3. As CSXT explains below, such a "solution" may not be lawful. Moreover, it would not address the deprivation of CSXT's statutory right to establish rates that is inherent in the unprecedented relief sought by the Petition. As the Board is aware, the Complainant in another pending rate case against CSXT is presently seeking to suspend all of the rates it challenges during the pendency of its case. *See* SECI Petition for Injunctive Relief, *Seminole Electric Coop. Inc. v. CSX Transportation, Inc.*, STB Dkt. No. 42110 (Oct. 3, 2008). There is a very real risk that, if the Board were to grant either of these meritless petitions, every complainant who files a rail rate case will request such an injunction. Not only would this create a significant new litigation burden on the Board and defendants in rate cases, but it would also serve as a strong incentive for shipper complainants to use the filing of rate cases as an expedient to obtain de facto rate suspensions. Such a development would fly in the face of the sound policy fostered by the Board to encourage parties to resolve their disputes short of formal litigation

facilities are [ ] (due to costs and other factors having nothing to do with CSXT's rail transportation service) and that CSXT's rate increases may cause DuPont to decide to [ ]. As explained below, even if DuPont were to show that [ ] as a direct result of the challenged rates – which DuPont does not even allege – that showing would not establish the irreparable harm to DuPont that would be required to grant a preliminary injunction.

What DuPont's allegations boil down to is that, like many others in today's very difficult and uncertain economic conditions, the two [ ] facilities are facing numerous economic and competitive challenges [ ]; and that any significant additional costs will cause DuPont] The Petition selectively focuses on only one incremental cost, namely that attributable to the increase embodied in CSXT's two common carrier rates. It does not discuss the myriad other significant costs affecting those facilities, such as the cost of raw materials, electricity, other process inputs, and any of numerous other costs and factors unrelated to CSXT's rates.[8] Moreover, DuPont does not represent that, if the Board suspends CSXT's rates, DuPont will [ ]. Rather, it simply indicates that DuPont [ ]

<u>The Edge Moor Plant.</u>

One of the two marginal plants that DuPont alleges may be further "jeopardized" if CSXT's rates remain in effect, Edge Moor, is solely served by CSXT's competitor, Norfolk Southern. *See* Exhibit 1, Verfied Statement of Bruce A. Kuzma ("Kuzma V.S."). CSXT moves

[8] DuPont does mention its obligation to spend [ ] for environmental retrofitting of the Wurtland plant, but only to emphasize its desires for certainty about rail transportation rates before it makes a decision about whether to undertake the much more costly retrofitting project.

chlorine (a TIH chemical) on a short haul from a plant in Niagara Falls, NY to a Buffalo, NY interchange with Norfolk Southern ("NS"), which transports the traffic all the way to the facility in Edge Moor, Delaware. *See id.*; Complaint Exh. B. There are numerous other sources from which the Edge Moor facility could obtain chlorine, including several served directly by NS. *See* V.S. Kuzma at 3-4. Dupont's chlorine transportation options for the Edge Moor facility thus include a single-line move on NS. *Id.* at 3. If, as DuPont claims, CSXT's rates for its 26-mile portion of the movement were truly out of line with the market, DuPont could readily ship the chlorine from an origin served by NS and take advantage of the efficiencies of single-line service.[9]

The Edge Moor plant's [ ] is due to a variety of economic factors that are entirely unrelated to CSXT's rail transportation rates. The Edge Moor plant is more than 80 years old – it began producing white pigment in 1925, and started producing titanium dioxide in 1931. *See* Exhibit 7. In the early 1950s, Edge Moor became the first plant in the world to use the chloride process to produce titanium dioxide. *Id.* Fifty years later, DuPont is the world's largest and lowest cost producer of titanium dioxide, and operates the largest titanium dioxide plant in the world at New Johnsonville, TN, as well as the facility that is reported to have the lowest costs, in DeLisle, MS. *See id.*; V.S. Kuzma at 3. Those and other DuPont facilities are far newer; use more advanced technology and equipment; [ ]; and are presumably more efficient and cost-competitive than the older Edge Moor facility. *See* Petition at 11; V.S. Lopez/Moore ¶¶ 4-6; V.S. Kuzma at 3. Indeed, if the aging Edge Moor facility were [ ]

[9] The joint line chlorine movement from Niagara Falls to Edge Moor accounts for the overwhelming majority of the rail transportation rate increase that DuPont alleges would further threaten the viability of the Edge Moor plant. *See* Petition at 10-11.

like the New Johnsonville facility, there would be no need for DuPont to [ ]. *See* V.S. Lopez/Moore at 2, n.2.

As DuPont's own evidence shows, the Edge Moor plant's [ ] is due to a variety of economic factors and conditions that developed over a number of years, and cannot be attributed to the marginal cost increase represented by CSXT's common carrier rail rates that took effect on December 1, 2008. As the Board is well aware, these are extraordinary times of economic crisis and upheaval not seen in the United States for 70 years, and virtually every economic actor has been affected by macroeconomic forces outside their control. *See, e.g.*, V.S. Lopez/Moore. A close reading of the verified statements DuPont submitted in support of its Petition reveals that none asserts that, if the challenged rates take effect, DuPont <u>will</u> [ ], but only that those rates will [ ] Those same statements allege that the facility [ ] Thus, read as a whole, DuPont's evidence indicates that [ ] whether or not the Board suspends the incremental increases embodied in the challenged rail rates.

It may be that in these extraordinary economic times the plant's total costs could at some point cause DuPont to consider [ ] However, any such business decision by DuPont would be the cumulative result of all costs, macroeconomic forces, and other considerations, and no more attributable to the challenged rail rates than to [ ] or relative inefficiency of the Edge Moor Facility, rising petroleum prices, or reduced demand for titanium dioxide, or any one of a number of factors.

The Wurtland Plant

Nor are CSXT's December 1 rate increases responsible for the [ ]. DuPont's submission indicates that the primary factor affecting [ ] is a consent decree DuPont entered with the Environmental Protection Agency, which will require DuPont to spend [ ] to retrofit the facility. *See* V.S. Kopko ¶ 2. This amount dwarfs the additional [ ] DuPont estimates it will pay to CSXT and its joint line partner to move fuming sulfuric acid (another TIH commodity) from DuPont's Wurtland facility to its customer in Petrolia, Pennsylvania. *See* Petition at 13.

In light of this fact, DuPont does not allege that CSXT's challenged rates will cause it [ ] Rather, it claims that the "lack of predictable and competitive rail rates is making it difficult for DuPont . . . to make important decisions," such as whether to retrofit the Wurtland facility V.S. Kopko ¶ 4. CSXT also prefers rate predictability over uncertainty. However, DuPont should not be heard to complain about "[un]predictable" rail rates when such short-term unpredictability is caused by the rate case that DuPont initiated. Moreover, DuPont's claim that such uncertainty may make it more "difficult" to "make important decisions" falls far short of irreparable harm.

At bottom, DuPont is seeking the Board's unprecedented intervention to allow DuPont to avoid the normal costs and risks of rate litigation, and to force CSXT to finance that litigation cost. In every rate case ever considered by the Board, the challenged rates have remained in force until the Board makes a rate reasonableness determination on the merits.[10]

[10] In one unique situation, the Board decided to re-open a rate case at the request of both parties, several years after it had decided a full-SAC case on the merits. *See Arizona Public Service Co. v. BNSF*, STB Docket No. 41185 (served Oct. 14, 2003); *cf. Seminole Electric Coop v CSXT*.

This sound standard practice both implements the carrier's statutory right to establish and collect any lawful rate unless and until it is found unreasonable, and protects it from unnecessary injury.[11]

DuPont's position is that it is not willing to bear a standard, normal cost of litigation – paying challenged rates during the pendency of the challenge – and that instead the Board should force *CSXT* to finance and subsidize *DuPont's* challenge by rolling back its rates without the inconvenience of a SAC analysis finding that those rates exceed a maximum reasonable level. If DuPont demonstrates on the merits that the challenged rates are not reasonable, it will be made whole through a rate prescription, and reparations (including interest) for the full amount of any overpayment. DuPont is a very large and profitable company that can readily afford to pay its own litigation costs, particularly in a case that it alone chose to initiate and pursue. The Board should not countenance DuPont's use of threats concerning its possible [ ] to attempt to avoid standard and entirely foreseeable costs of the rate litigation that DuPont alone elected to bring. The Petition has no basis in law or equity, and should be denied.

STB Docket No. 42110, SECI's Petition for Injunctive Relief (Oct. 3, 2008) (pending petition seeking pre-adjudication rate suspension). During the pendency of the re-opening, the carrier agreed to charge and collect only the rate that had been prescribed in the original decision, and not to seek a higher rate. The Board issued an order implementing that agree approach. *Id.* That consensual approach to a unique set of circumstances and procedural posture has no relevance to DuPont's injunction request, and the Petition does not contend otherwise.

[11] If DuPont were to prevail in its challenge and the rates were found unreasonable, CSXT would be required to make DuPont whole by paying it the entire amount of overpayment found by the Board, with interest. If CSXT's rates were suspended as DuPont requests and later found not to exceed a maximum reasonable level, however, CSXT would be barred from recovering the revenue lost as a result of the rate suspension, and thus would suffer irreparable harm.

ARGUMENT

The Board should deny DuPont's Petition because it seeks to misuse the Board's equitable power and because DuPont has not established any of the four elements required to justify an exercise of that extraordinary emergency power. A rail common carrier such as CSXT has the statutory right to establish rail transportation rates in the first instance. *See* 49 U.S.C. § 10701(c). Rail carriers' long-established "ratemaking initiative" is an integral part of the common carrier obligation, which requires a railroad to accept traffic tendered to it, including dangerous "toxic by inhalation" chemicals such as those at issue in the Petition. Based on the Complaint, the untested allegations of DuPont's consultant concerning revenue-to-variable cost ratios, and vague and indefinite allegations concerning the economic viability of selected facilities DuPont – a company with $30 billion in annual revenues – seeks the Board's extraordinary intervention to deny CSXT its statutory right to establish rates under which it will fulfill its common carrier obligation. DuPont has utterly failed to prove it is likely to prevail on the merits of this complex case, or that it faces a threat of irreparable harm in the absence of the unprecedented relief it seeks. Accordingly, the Board should deny DuPont's request to enjoin CSXT from collecting its lawfully established common carrier rate as unprecedented and unnecessary; inconsistent with federal statutes and fundamental policy vesting the ratemaking initiative with the rail carrier; and unsupported by the meager record in this case.

I. ICCTA Abolished Pre-Adjudication Rate Suspension Authority, And DuPont Offers No Justification for an Unprecedented Rate Suspension in This Case.

Historically, the ICC had broad powers to suspend a rail common carrier rate before the rate went into effect. Beginning with the Staggers Act, however, Congress progressively curtailed the ICC's power to suspend a common carrier rate prior to a full on-the-merits determination of whether the rate in question was unreasonable. *See, e.g.*, 49 U.S.C.

§ 10707(c) (1994) (now repealed). Ultimately, Congress repealed the ICC's former power to suspend rates, in a key provision of ICCTA. As the Board has summarized,

> In [ICCTA], Congress further facilitated railroads' rate-making initiative by repealing the rate suspension procedures under which rate adjustments were sometimes prohibited from taking effect without first being investigated. . . .

Arizona Public Service Co. v. BNSF, STB Doc. No. 42077, Slip Op at 7 (served Oct. 14, 2003) (the "*Lee Ranch*" case). Simply stated, the Board does not have the power to suspend common carrier rates that was once exercised by the ICC. DuPont's request for an injunction, however, is the same thing under a different name. What DuPont is seeking is an order prohibiting CSXT from collecting a lawfully established common carrier rate at the very outset of the case, prior to (i) the submission of any market dominance evidence necessary to establish that the Board has jurisdiction to consider this case, or (ii) Stand-Alone Cost ("SAC") evidence required to determine whether the challenged rate is unreasonable under governing standards. As the Board recognized in *Lee Ranch*, this is the power that Congress withdrew in ICCTA in all but the most exceptional circumstances.

In an entirely separate and distinct provision, ICCTA authorized a limited residual power to issue injunctions in emergency situations in which such relief was essential to prevent imminent irreparable harm. *See* 49 U.S.C. § 721(b)(4). This emergency power was intended primarily to allow the Board to prevent irreparable harm in the context of *exemption* proceedings, and DuPont presents no evidence or argument that Congress intended this provision to authorize the Board to override carriers' statutory ratemaking initiative by suspending common carrier rates before any determination that those rates at issue exceed a reasonable level.

CSXT is aware of only three cases in which the Board has even considered a request to suspend a rate prior to a determination on the merits. As the Board explained in *Lee Ranch*, it will consider such relief only where the party seeking that relief satisfies all of the requirements for emergency injunctive relief, including a showing that the requesting party "will be irreparably harmed in the absence of the requested relief." *Lee Ranch*, STB Docket No. 42077 Decision at 4-5 (emphasis added).[12]

Consistent with the statute and congressional intent, the Board has exercised the extraordinary emergency injunction authority extremely sparingly. And, it has *never* enjoined a rate prior to a rate reasonableness determination on the merits. In a *Simplified Guidelines* case, the complainant invoked Section 721(b)(4) and sought to enjoin application of the challenged common carrier rate. *See B.P. Amoco Chem. Co. v. Norfolk So Ry. Co.*, STB Docket No. 42093 (served June 6, 2005). The Board denied the injunction request because the complainant had failed to show that it would suffer irreparable injury in the absence of an injunction. *See id.*, slip op. at 3 (explaining that, if the Board found the challenged rate unreasonable at the end of the case, it would "order reparations to BP reflecting the difference between the challenged rate and the maximum reasonable rate along with interest".)

In another case, a coal supplier sought an injunction based on allegations of a "gross . . . disparity" between a carrier's rail transportation rates from two mine origins that competed to supply coal to the same utility.[13] *See Arizona Pub. Serv. Co. v. Burlington N. and Santa Fe Ry. Co.*, STB Docket No. 42077 (served Oct. 14, 2003)("*Lee Ranch*"). The Board denied the injunction because the movant had failed to show it faced harm that was "both

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[12] As demonstrated below, DuPont has not demonstrated that it will be irreparably harmed absent an injunction. *See* II.B *infra*. This failure alone compels denial of the Petition.

[13] The disparity was itself the result of the only time the Board has enjoined collection of a rate during the pendency of a rate case. The Board enjoined BNSF from collecting a new rate during the pendency of a reopened rate case, which resulted in a disparity between the Board-limited rate from one mine and the common carrier rate from a competing mine to the same power plant. *See Lee Ranch*, slip op. at 1-3 (served Oct. 14, 2003). This collateral injury illustrates one of the potential unintended consequences of issuing an extraordinary injunction like that sought in this case.

imminent and irreparable." *Id.*, slip op. at 3-4. The Board further found that granting the requested rate suspension injunction was inconsistent with its limited rate regulatory function, and that issuing injunctions to address indirect effects of rail rates could "spiral[] out of control." *Id.* at 5.[14] As the Board found, the only way to control such a process would be to deny railroads "the pricing initiative" guaranteed to them by statute (*see id.* (citing 49 U.S.C. § 10701(c)),[15] which is precisely the right that the Petition seeks to deny CSXT.

DuPont seeks to nullify CSXT's right to establish, maintain, and collect lawful rates, using the Board's extraordinary power to protect and advance the statutory rights and policies established by ICCTA, including Section 10701(c). It would be truly perverse if a party were allowed to employ that extraordinary power to subvert a carrier's exercise of a core statutory right guaranteed by ICCTA. Because Congress could not have intended the Board to wield its equitable power to vitiate that core statutory right, the Board should deny the Petition without further consideration. In any event, CSXT demonstrates below that if the Board were to apply the four-part test for preliminary injunctive relief, it would reach the same conclusion: the Petition must be denied.

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[14] A decision by DuPont's customer INDSPEC (or its parent Occidential Petroleum) [ ] because DuPont chose to pass rail rate costs on to that customer, would be, at most, an indirect effect of the those rates. Any decision by DuPont [ ] would also be such an indirect effect.

[15] The sole case in which the Board enjoined a carrier from establishing and collecting a new rate involved the re-opening of a rate prescription several years after a full adjudication on the merits. *See Arizona Public Service Co. v. Atchison, T. & S.F. Ry Co.*, 2 S.T.B. 367 (1997). In that case, the parties consented to the effective maintenance of the rate prescription during the pendency of the reopening, due to the unique circumstances and posture of the case. *See id.* In the present unexceptional circumstances, CSXT emphatically does <u>not</u> consent to the suspension of its lawfully established rates during the pendency of this proceeding.

II. DUPONT HAS NOT ESTABLISHED ANY OF THE ESSENTIAL ELEMENTS FOR A PRELIMINARY INJUNCTION.

In order to obtain a preliminary injunction, a petitioner must demonstrate each of the following essential elements: (i) it has a strong likelihood of success on the merits of its challenge: (ii) it "will suffer irreparable harm in the absence of a stay": (iii) other interested parties will not be substantially harmed: and (iv) the public interest supports the injunction.[16] *NYS&W Railway Corp. -- Discontinuance – In Broome and Chenango Counties, NY.* STB Docket No. AB 286 (Sub-No. 5X) (Sept. 30, 2008) (emphasis added): *see Railroad Salvage and Restoration, Inc. and G.F. Weidman International, Inc – Petition for Investigation and for Emergency Relief Under 49 U.S.C. § 721(b)(4)*, STB Dkt. No. 42107 (served June 30, 2008). The party seeking an injunction must satisfy "the burden of persuasion on all of the elements required for [such] extraordinary relief." *B.P. Amoco Chemical Co. v. Norfolk Southern Ry. Co.*, STB Dkt. No.42093 (June 6, 2005). As demonstrated below. DuPont has failed to satisfy its burden on any of those elements, and the injunction must be denied.

A. DuPont Has Not Shown A Strong Likelihood Of Success On The Merits.

DuPont has not shown that it has a strong likelihood of success on the merits of its SAC challenge to CSXT's rates for 99 origin-destination pairs. In fact, DuPont does not even *attempt* to show that a SAC analysis will find the challenged rates exceed a maximum reasonable

[16] DuPont's Petition erroneously describes the second essential element as requiring only a showing of a *threat* of irreparable harm. Petition at 9. As numerous Board decisions and the D.C. Circuit standard they adopt make clear, in order to obtain a preliminary injunction, a petitioner must show that it "will be irreparably injured if [preliminary] relief is withheld," not that it merely faces a threat of such harm in the absence of an injunction. *See, e.g., CSXT v. Williams*, 406 F.3d 667, 670 (D.C. Cir. 2005) (emphasis added); *Railroad Salvage and Restoration*, STB Dkt. NO. 42107 (June 30, 2008) (case relied upon by DuPont for preliminary injunction standard requires movant to demonstrate it "will suffer irreparable harm") (emphasis added).

level. Instead, DuPont relies entirely upon untested allegations of its consultant concerning revenue-to-variable cost ratios, which have no relevance to a SAC analysis.

1. DuPont Has Not Established that The Board Has Jurisdiction Over the CSXT Rates in Question.

The Board does not have jurisdiction over CSXT's rates until it determines, based on actual evidence presented after adequate discovery, that CSXT has market dominance over the movements in question. *See* 49 U.S.C. § 10704(a)(1). DuPont alleged in its Complaint that CSXT has market dominance over all 99 of the movements covered by the Complaint, and CSXT's Answer denied that allegation. Discovery has barely commenced in this case, and DuPont has not produced a single document to CSXT. While the Petition offers a consultant's allegations regarding R/VC ratios he claims are generated by the three rates DuPont seeks to suspend, at this very early juncture those allegations are entirely untested.[17] Therefore, those untested allegations cannot form adequate or appropriate basis for a finding of quantitative market dominance.

More important, DuPont's own submissions show there are real questions about whether CSXT has qualitative market dominance over the movements in question. In the first instance, the Edge Moor facility, which is at the center of two of the three movements, is solely served by Norfolk Southern, not by CSXT. With respect to modal competition, DuPont offers only conclusory allegations that are wholly inadequate to prove lack of competitive options. *See* V.S. Pileggi ¶ 17 (acknowledging that DuPont shipped titanium dioxide from Edgemoor to New Johnsonville by truck as recently as October 31, 2008, but asserting that trucks "cannot compete with rail" for that movement); *id.* at 7; *id.* at ¶ 22 (acknowledging that, in 2006, DuPont shipped

[17] Moreover, DuPont's Amended Complaint alleges different variable costs and R/VC ratios. *See* N. DiMichael, J. Moreno Letter to Secretary Quinlan (Dec. 16, 2008). DuPont's consultant does not offer an opinion or allegations concerning those new R/VC ratios.

14 percent of its traffic between Wurtland and Petrolia by truck, and making no allegation that truck transportation is not a competitive option).[18]

Thus. DuPont has not met its threshold burden of proving CSXT has market dominance over the three movements in question. An adequately supported finding of market dominance is necessary to establish that the Board has jurisdiction over the challenged rates. Unless and until DuPont is able to establish that CSXT has market dominance. the Board lacks jurisdiction or authority to determine the reasonableness of the rates in question in a full proceeding on the merits, let alone to suspend CSXT's lawfully established rates without an on-the-merits determination of whether they are reasonable.

2. <u>R/VC Ratios and Comparisons are Not Relevant to a SAC Analysis.</u>

Even if DuPont were to establish that the Board has jurisdiction over the three challenged rates, its arguments would be wholly inadequate to show it has a strong likelihood of prevailing on the merits of its claim. DuPont's entire merits argument is that the three issue movements' alleged R/VC ratios are higher than the average R/VC ratios at which the Board prescribed rates in selected past rate cases. *See* Petition at 16. V.S. Crowley at 7-8. This contention is unavailing for several reasons.

<u>First</u>, R/VC ratios are irrelevant to a Stand Alone Cost ("SAC") analysis. The only function of R/VC ratios in a SAC case is to assist in determining whether the Board has jurisdiction over the challenge, and to enforce the jurisdictional floor on any rate prescribed by the Board – the ratios have no relevance whatsoever to the SAC methodology. *See generally*,

[18] To date, DuPont has moved a total of 14 cars under the new rate on between Niagara Falls and Edge Moor, and zero cars on the Edge Moor to New Johnsonville rate. Because CSXT has neither "charged" nor "collected" the challenged rate for the Edge Moor to New Johnsonville movement, the Board would still lack jurisdiction over that rate even if DuPont could establish that CSXT would have market dominance over that movement. *See* 49 U.S.C. § 10704(a)(1).

Coal Rate Guidelines, 1 I.C.C.2d 520. Not only do R/VC ratio comparisons play no role in CMP (including SAC) analysis, such comparisons have been authoritatively – indeed resoundingly – rejected as a proxy for CMP analysis and results. *See Burlington Northern Railroad Company v. ICC*, 985 F.2d 589 (D.C. Cir. 1992) (rejecting ICC's R/VC comparison approach as having no relation to CMP, and having "no evident connection to any of the goals that the [ICC] said CMP/SAC was . . . . designed to achieve."). Moreover, demand-based differential pricing principles at the heart of modern railroad economics and CMP require that some rates generate substantially higher R/VC ratios than others.[19] Unlike the Three Benchmark cases DuPont brought against CSXT last year, in the present SAC case, R/VC ratio comparisons have no relevance to a CMP analysis. Accordingly, DuPont's suggestion that such comparisons for three of the ninety-nine challenged rates indicate it is likely to succeed on the merits of a very complex SAC case based on a SARR serving all 99 O-D pairs is entirely unavailing.[20]

Second, the three SAC results that DuPont selected for comparison are not suitable comparators. All three of the cases concerned rail movements in the plains of the Western United States, where topography, rail operations, and other relevant conditions are substantially different from those in the East, where DuPont would construct and operate its SARR. Moreover, two of those three cases involved coal unit train service cycling between very

[19] Because of customers' varying demand elasticities for different movements, differential pricing necessarily means carrier's rates will generate significant variations in R/VC ratios. In SAC cases in which the Board has found the challenged rates below a maximum reasonable level, R/VC ratios for movements in the same SARR have varied substantially. *See, e.g.*, *Duke v CSXT*, STB Dkt. No. 42070 (Oct. 20, 2004). This is not evidence that the higher R/VC movements are subject to unreasonable rates, but only that carriers are engaged in differential pricing, as required by sound railroad economics and the *Coal Rate Guidelines.*

[20] Once a SAC analysis is complete, R/VC rations for all SARR movements have relevance to the distribution of any resulting excess of SARR revenues over costs, under the newly established "Maximum Mark-up Methodology." R/VC ratios of the issue traffic alone, however, have nothing to do with the core SAC analysis.

few origins and destinations, which bears little resemblance to the complex and geographically dispersed mix of merchandise, chemicals, and other traffic that will be involved in this case. Even if R/VC ratios in prior SAC cases were relevant to SAC analysis in this case – which they are not – the East is not the West, and DuPont is comparing apples and oranges.

Third. Dupont again compares apples and oranges by suggesting that the maximum R/VC ratios the Board initially found in the parties' Three Benchmark cases somehow show that DuPont is likely to prevail in its current SAC challenge. R/VC ratios from Three Benchmark cases, which depend on the selection of "comparable" traffic, are not germane to a complex SAC analysis based on a SARR that will likely replicate most of the CSXT rail network. Moreover, DuPont fails to note that the Board has *vacated* its decisions in those three cases and reopened the cases to correct for a significant RSAM calculation error identified by CSXT. *See* Decision, STB Docket Nos. 42099, 42100, 42101 (served Nov. 21, 2008). While the magnitude of the necessary correction will be determined in further proceedings, it is virtually certain to increase the R/VC ceilings substantially.[21] The Board's initial R/VC ceiling findings are thus null and void and have no effect or utility in predicting the result in another Three Benchmark case, let alone an immeasurably more complex SAC case.

Moreover, if DuPont were able to establish a likelihood of success on the merits, that showing would preclude it from demonstrating it will suffer irreparable harm in the absence of an injunction. If DuPont prevails in its rate challenge, it will be entitled to a rate prescription and full reparations, with interest, of any excess payments it made during the pendency of this case. Thus, made whole, DuPont would have suffered no harm, let alone irreparable harm.

[21] In fact, it is entirely possible that the necessary adjustment will result in a finding that the challenged rates generate R/VC ratios below the Three Benchmark ceiling, and thus that those rates are reasonable and no rate prescription is warranted.

In sum, DuPont's proffered R/VC comparisons have neither relevance nor probative value with respect to the question of its likelihood of prevailing in the present SAC case. And, it is beyond serious dispute that they do not satisfy DuPont's heavy burden of proving a *strong likelihood* of success on the ultimate merits of the case. DuPont's failure to carry its burden on this essential element alone compels denial of the Petition.

B. DuPont Has Not Shown That The Economic Harm it Alleges is Threatened By the Challenged Rate Increases Would Be Irreparable.

As the Supreme Court has summarized, "the basis of injunctive relief . . . has always been irreparable harm [to the movant] and inadequacy of legal remedies." *Sampson v Gen. Servs. Admin*, 415 U.S. 61, 88 (1974) (internal quotation omitted). DuPont alleges neither. The basis of DuPont's request for injunctive relief is its claim that in this time of recession and economic upheaval, rail transportation costs further threaten the financial viability of two of its marginal plants. Even assuming, *arguendo*, the Petition's allegations could be proved, the resulting harm to DuPont would be wholly economic. The law is clear that mere economic injury does not constitute irreparable harm, but DuPont alleges only that it may suffer economic injury. *See, e.g., Delaware and Hudson Company – Lease and Trackage Rights – Springfield Terminal Railway Company,* ICC Fin. Dkt. No. 36095 (Sub-No. 4) Decision at 3 (served Nov. 2, 1995) ("economic loss by itself does not constitute irreparable harm.").

Furthermore, DuPont has not even alleged that [ ] if CSXT's rates are not suspended. Instead, DuPont asserts that [ ] in the absence of such preliminary injunctive relief. As the D.C. Circuit has made clear, claims that a movant may or "will likely" suffer injury are not sufficient to satisfy the irreparable injury requirement. *Wisconsin Gas Co. v F.E.R.C.*, 758 F.2d 669, 674 (D.C. Cir.

1985).[22] Finally, DuPont's claim that [ ] in response to rising rates is incompatible with its claim of likely success on the merits. If the Board were to somehow find DuPont has satisfied the "likelihood of success on the merits" element, that finding would preclude a finding that DuPont would suffer irreparable harm if it paid CSXT's lawfully established rates, because DuPont would be made whole by money damages at the end of the case. DuPont's failure to demonstrate it will suffer irreparable harm in the absence of an injunction independently compels denial of the Petition.

1. <u>DuPont Does Not Claim It Will Suffer Imminent Irreparable Injury In The Absence Of An Injunction.</u>

The purpose of a preliminary injunction is to preserve the status quo, when the alternative would cause the movant to suffer imminent irreparable harm that is "both <u>certain</u> and <u>great</u>." *Wis. Gas Co.*, 758 F.2d at 674 (emphasis added). The D.C. Circuit explained:

> Bare allegations of what is likely to occur are of no value since the court must decide whether the harm will *in fact* occur. The movant must provide proof that the harm . . . . is certain to occur in the near future. Further, the movant must show that the alleged harm will directly result from the action which the movant seeks to enjoin.

Wis. Gas Co., 758 F.2d at 674 (emphasis in original). Under the standard *Holiday Tours* analysis applied by the Board, the question is "[h]as the petitioner shown that without such relief, <u>it will be</u> irreparably injured?" *Washington Metro. Area Transit Ass'n v. Holiday Tours*, 559 F.2d 841, 843 (D.C. Cir. 1977) (emphasis added).[23] The injury that will be suffered if an injunction is not

[22] Moreover, DuPont has not alleged that the injunction will ensure that DuPont does not [ ]. Thus, DuPont has not shown that issuance of the injunction will *prevent* the "irreparable" harm it alleges [ ], which is the primary purpose of a preliminary injunction.

[23] *See also R.R. Salvage & Restoration, Inc.—Petition for Investigation & for Emergency Relief under 49 U.S.C. 721(B)(4)—Security Deposit for Demurrage Charges, Missouri & N. Arkansas R.R. Co.*, STB Docket No. 42107, (service date June 30, 2008) ("they will suffer irreparable

granted must be both certain and great: a concern or belief that a particular injury may occur or is threatened is not sufficient to demonstrate the necessary irreparable harm. "Injunctive relief will not be granted against something merely feared as liable to occur at some indefinite time." *Wisconsin Gas*, 758 F.2d at 674 (quoting *Connecticut v. Massachusetts*, 282 U.S. 660, 674 (1931)); *see APS v. BNSF*, STB Dkt. No. 42072. Decision at 3-4 (served Oct. 14, 2003) (to satisfy irreparable harm requirement, movant must show harm is "both imminent and irreparable").

DuPont does not even *allege* that it will suffer any irreparable injury as a result of the rates it seeks to suspend.[24] Rather, DuPont asserts that [

] Petition at 11. As demonstrated in the next section, [

] in order to reduce costs does not constitute irreparable harm to DuPont. Moreover, even if the Petition's erroneous theory, that [ ] operated by a business constitutes irreparable harm to that business, were correct, DuPont makes only vague and indefinite allegations that [ ] may be *threatened* with the specified harm, not

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harm in the absence of a stay"); *New York, Susquehanna & W. Ry. Corp.—Discontinuance of Service Exemption—in Broome & Chenango Counties, NY*, STB Docket No. AB-286 (Sub-No. 5X) (Service Date Sept. 30, 2008) ("NYDOT has not alleged or shown that it will be irreparably harmed in the absence of a stay") (emphasis added); *Estate of Coll-Monge v. Inner Peace Movement*, 524 F.3d 1341, 1349 (D.C. Cir. 2008) ("the district court must consider whether . . . the party seeking the injunction will be irreparably injured if relief is withheld") (internal quotation omitted) (emphasis added).

[24] *See* V.S. Crowley (no allegations concerning irreparable harm); V.S. Pileggi (same); J.V.S. Lopez and Moore (identifying paragraph for each witness contains conclusory assertion that purpose of statement is to support claim that CSXT rates "will cause irreparable harm," but actual factual averments allege only potential for injury, and only to individual facility, not to DuPont itself); V.S. Kopko (to similar effect); *cf.* V.S. Burns (statement of employee of non-party, speculating that if DuPont chooses to pass rail rate increases on to it, then unspecified "irreparable harm" to non-party's business will occur).

that CSXT's rail rate increases <u>will</u> cause [ ].[25] Thus, even under DuPont's erroneous theory, its allegations would be insufficient to establish it faces irreparable harm.

DuPont claims that a [ ] V.S. Lopez/Moore at 2. It also claims that [ ] V.S. Lopez/Moore at 3 (emphases added).

Furthermore, DuPont's allegation that it [ ] is belied by its recent commercial actions and statements. In addition to price increases in the first half of 2008, DuPont increased prices for titanium dioxide worldwide in June and July 2008 and increased those prices significantly again in North America in September 2008. *See* Exhibit 8 (DuPont news release regarding $100/ton increase effective June 15, 2008); Exhibit 9 (article concerning $150/ton increase in July); Exhibit 10 (article concerning increase in September 2008). Further, in the second half of 2008

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[25] Indeed, even the claim that [ ] Based on DuPont's allegations and publicly available information, it appears that the rate increase for chlorine movements from Niagara Falls to Edge Moor constitutes approximately [ ] of the total value of shipments from the plant. Based on ICIS figures, a conservative estimate of the average price of titanium dioxide in 2008 is $2,000 per ton. *See* Exhibits 8-11. The Edge Moor plant's website states that, in the most recent full calendar year, the plant produced 94,000 tons of titanium dioxide. *See http://www2.dupont.com/Edge_Moor/en_US/products.html*. If Edge Moor produces the same amount of titanium dioxide in the coming year, the total value of that product (conservatively assuming a price of $2,000 per ton) would be $188 million. DuPont alleges that the increase it seeks to enjoin will cost it $[ ] per year. Dividing DuPont's estimate of the cost of CSXT's rate increase [ ] by the estimated market value of the Edge Moor plant's titanium dioxide output ($ 188 million) yields [ ] as the approximate percentage of the value of Edge Moor's titanium dioxide production represented by CSXT's December 1 rate increase.

alone, DuPont has increased surcharges on titanium dioxide sold to paper and board to customers in North America – [ ] – at least *three* times. *See* Exhibit 10; Exhibit 11, "U.S DuPont to Implement Additional TiO2 Surcharge," *Chemical News and Intelligence* (Oct. 1, 2008). These charges alone constitute a increase of approximately 13-15% on titanium dioxide sold to [ ]. Finally, DuPont's Titanium Technologies Global Business Director has made clear, in statements not made for litigation, that DuPont *is* able to pass materials and services cost increases along to its customers, and that it fully intends to do so: "Demand for TiO2 remains strong . . . . At a time when the market for many of our purchased raw materials and services is extremely volatile, we cannot afford to delay our ability to pass on these increases." Exhibit 10, "DuPont Titanium Technologies Announces Price Increase for Ti-Pure Titanium Dioxide Products in North America," PRNewswire-First Call (Sept. 2, 2008) Statement of Ian Edwards. At best, DuPont has failed to carry its burden of making a "clear showing" that the Edge Moor facility [ ] if the Petition is denied.

Finally, DuPont claims that [ ] V.S. Kopko at 2. All of DuPont's allegations of harm to the two plants are indefinite, speculative, and dependent on other actions and decisions by DuPont. Significantly, DuPont does not allege that either of the two plants [ ]. DuPont therefore does not even allege, let alone carry its burden of proving, that it will suffer imminent irreparable harm that is either certain or great.

2. Economic Harm To Specific DuPont Facilities Is Not Irreparable Harm To DuPont.

A "preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." *Muzarek v. Armstrong*, 520 U.S. 968, 972 (1997) (internal quotation omitted) (emphasis in original). The D.C. Circuit, whose decisions guide the Board's determination of preliminary injunction petitions, applies a "high standard for irreparable injury." *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006) "The key word in this consideration is irreparable"; mere economic harm can be remedied. *Virginia Petroleum Jobbers Ass'n v. Fed Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958); *Sampson*, 415 U.S. at 90 ("the temporary loss of income, ultimately to be recovered, does not usually constitute irreparable injury"); *England*, 454 F.3d at 297-98; *Davenport v. Int'l Brotherhood of Teamsters*, 166 F.3d 356, 367 (D.C. Cir. 1999) ("If plaintiffs ultimately succeed on the merits, this kind of injury can be remedied with money damages.").

a. The Petition Does Not Allege, and Could Not Prove, That DuPont Itself Will Suffer Irreparable Harm if an Injunction is Denied.

DuPont has not even alleged—let alone proved— that DuPont itself will suffer (or even is threatened with) immediate irreparable harm due to CSXT's common carrier rates. *Cf. BP Amoco Chem. Co. v. Norfolk S. Ry. Co.*, STB Docket No. 42093, 2005 WL 1326961, at *3 (service date June 6, 2005) ("Although BP states that it cannot absorb the subject rate increase indefinitely, such a statement is inadequate by itself to persuade the Board that BP will suffer irreparable injury."). DuPont does not claim that it lacks the financial wherewithal to pay the three rate increases at issue (which DuPont estimates will total about [ ] per year), or even that it will have any real difficulty paying those rates during the pendency of this case. Nor could it. Even after the precipitous drop in stock values in recent months, DuPont has a market capitalization of almost $24 billion. In the most recent full reporting year, a period of recession and depressed economic activity, DuPont had sales of almost $30 billion, and net income of approximately $3 billion. Exhibit 4, DuPont 2007 10-K Consol. Income Stmt.. For the nine months ending September 30, 2008, DuPont reported profits of approximately $2.6 billion. an increase of almost $200 million over the same time last year. Exhibit 5, DuPont Sep. 2008 10-Q Sched. A. Furthermore, DuPont recently announced it expects free cash flow to increase from $1.3 billion in 2008 to $2.5 billion in 2009. Exhibit 2, DuPont Press Release Dec. 4, 2008. The increase embodied in the three rates DuPont seeks to enjoin is miniscule in comparison to DuPont's free cash flow alone.

While DuPont complains of the economic burden that increased freight costs for these three movements will cause, the sum total of the alleged burden constitutes approximately one-one hundredth of one percent of DuPont's total sales of almost $30 billion/year. *See* Exhibit 4, DuPont 2007 10-K Consol. Income Stmt. In a similar request for a preliminary injunction recently decided by the United States District Court for the District of Columbia, the court held that alleged economic harms of the same magnitude claimed in this case, $3-4 million, measured against sales of $30 billion, or 1/100 of one percent, "cannot be considered irreparable under even the most charitable of standards." *Coalition for Common Sense v. United States*, 576 F.Supp. 2d 162 (D.D.C. 2008).

The narrow exception to the general rule that economic injury (and other injury compensable by monetary damages) does not constitute irreparable harm is limited to situations where an economic injury is so large that it "threatens the very existence of the movant's business." *Wis. Gas Co.*, 758 F.2d at 674. Evidence short of showing that a movant will go out of business absent the requests injunction is not sufficient to establish this exception. *See id.*, 758 F.2d at 674-76: *CityFed Fin. Corp. v Office of Thrift Supervision*, 58 F.3d 738 (D.C. Cir. 1995) (movant's failure to demonstrate it would go into bankruptcy absent injunction compelled denial of preliminary injunction). Here again, DuPont makes no attempt to show that it will go out of business, or even that it will close a division or product line, if it does not obtain an injunction. DuPont's claim does not fit within the narrow exception to the rule that economic injury does not constitute irreparable harm.

DuPont does not seek to show that DuPont itself would suffer irreparable harm if CSXT is allowed to charge its common carrier rates during the pendency of this proceeding. The reason is that such a claim would be absurd on its face. Thus, DuPont has not even attempted to establish the single most critical requirement for preliminary injunctive relief – that it will suffer irreparable harm in the absence of such relief. *See, e.g., Sampson v. Gen. Servs. Admin.*, 415 U.S. 61, 88 (1974). This failure alone compels denial of the Petition.

b. Alleged Economic Harm to Two of DuPont's Hundreds of Facilities is Insufficient to Establish Irreparable Harm.

Recognizing that it could not possibly demonstrate the three incremental rate increases will cause irreparable harm to DuPont, Petitioner instead claims that a potential [ ] increase in rail rates for movements from Niagara Falls to Edge Moor. DE, and from Edge Moor to New Johnsonville, TN <u>might</u> cause DuPont to decide to [ ]. Petition at 11; V.S. Lopez/Moore at 2. DuPont also claims that a possible [ ] rail rate increase for rail transportation to the Wurtland facility [ ] investment required by the Environmental Protection Agency ("EPA"). Petition at 13-14. This claim seems to put the cart before the horse.

Regardless, DuPont does not even claim that its Wurtland facility is unable to bear the challenged common carrier rate, just that it does not wish to do so.[26]

DuPont could readily avert the potential economic harm it alleges by simply choosing to [ ] while it challenges CSXT's rates. *See* 11A Wright, Miller, & Kane § 2948.1, pp. 152-153 ("Not surprisingly, a party may not satisfy the irreparable harm requirement if the harm complained of is self-inflicted."). As demonstrated, it is indisputable that a company with DuPont's vast resources, robust profits, and available cash can readily absorb CSXT's rates to three plants while it challenges those rates before the Board. Moreover, if DuPont truly believes that it will likely succeed on the merits (a conclusion that it asks the Board to make) it will get that increase back with interest at the end of the case and CSXT's rates provide no reason whatsoever for DuPont to refuse to finance those costs (as it is doing for the other 96 rates it is challenging in this case) or take other drastic actions with respect to the Edge Moor and Wurtland plants.

Whether deliberately or not, DuPont's Petition has confused the separate and distinct concepts of harm causing the failure of a business (which may constitute irreparable harm) with [ ] (which is not irreparable harm). *See* Petition at 12. DuPont has cited no case for the proposition that the standard for irreparable

[26] DuPont instead relies on speculative third-party claims of economic harm to a facility run by INDSPEC Chemical Corp., a DuPont customer that is a wholly-owned subsidiary of Occidental Petroleum Corp. *See* V.S. Burns. This customer might be economically harmed <u>only if DuPont choses to increase its prices</u> for Oleum shipments to that facility. V.S. Burns at 2. Moreover, while INDSPEC says the Wurtland plant is the only domestic producer of one particular concentration of fuming sulfuric acid, it conspicuously does not allege that is the only concentration INDSPEC is able to use at the Petrolia plant. *Id.* Indeed, INDSPEC sometimes takes shipments of fuming sulfuric acid from another plant, and there are a number of other plants in the Eastern U.S. that produce the chemical. V.S. Kuzma ¶ 7. Thus, even if injury to a third party were sufficient to establish irreparable harm to a petitioner, the evidence DuPont has presented is inadequate to show that third party would suffer <u>any</u> injury, let alone irreparable injury.

economic harm can be met by showing a threat to the existence of a subunit of a division within a business rather than to the entire business entity that filed for relief. This is not the law, for very good reason. Such a loose exception would swallow the "economic harm is not irreparable harm rule" and encourage litigants to find some marginal subdivision, department, function, or facility whose existence can be claimed to be in jeopardy in order to obtain a preemptive preliminary relief without proving their entitlement to that relief.

Even if the [ ] of a small minority of a company's facilities were enough to establish irreparable harm – which it is not – DuPont has not presented enough financial information about its facilities to allow a meaningful evaluation of its claims of irreparable injury. About the only conclusion the Board might reasonably draw from the verified statements DuPont has submitted is that the two facilities face economic challenges that have nothing at all to do with CSXT's rates.[27] Despite submitting 37 pages of verified statements from five witnesses, DuPont presents no evidence that could support a finding that the two plants [ ] as a direct result of the increases embodied in the challenged rates. Indeed publicly available evidence is to the contrary. While DuPont recently announced that it plans to cut 2,500 employee positions and close 10 plants, DuPont employees at Edge Moor were not among those cut. *See* Exhibit 12, Andrew Eder, *DuPont to Cut Jobs, Idle Plants*, The News Journal (Dec. 5, 2008); Exhibit 13, Jeff Montgomery, *Edge Moor Pigment Plant Avoids Layoffs*, The News Journal (Dec. 5, 2008).

As for Wurtland, CSXT's challenged rates are dwarfed by other costs and challenges facing the plant. According to DuPont, the EPA has required [ ] of work to be

[27] For example, the Edge Moor facility [ ] Petition at 11. Because of [ ]. Petition at 11.

performed at the Wurtland facility. Petition at 13. This expense dwarfs the [ ] rate increase that DuPont claims threatens the viability of that facility. If the [ ] uncertainty in rehabilitation expense does not threaten the facility, then the [ ] alleged increase in rail rates does not threaten the facility.[28] Nor do any of DuPont's witnesses claim that DuPont's financial condition would force it to [ ] if subjected to higher rail rates.

In sum, DuPont has presented no evidence that remotely approaches satisfaction of its burden to prove that the rate increases it seeks to enjoin would directly cause DuPont immediate, great and certain irreparable harm. To the contrary, the economic "injuries" DuPont alleges can be readily absorbed by a company of DuPont's size and financial wherewithal, and, if DuPont were to prevail on the merits, those temporary financial injuries would be easily remedied through the award of reparations.

C. DuPont Has Not Satisfied the Remaining Two Requirements for a Preliminary Injunction

Because DuPont has failed to satisfy its burden on the two primary requirements for granting a preliminary injunction, the Board may deny DuPont's Petition without further consideration. Below, CSXT demonstrates that DuPont also has not satisfied the two other essential elements, lack of harm to other parties (e.g. CSXT) if the injunction is granted; and that the public interest favors the issuance of the requested injunction.

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[28] DuPont also claims that "lack of predictable" rail rates and resulting uncertainty makes it "difficult" for DuPont to plan for the future and decide whether to "[ ]." *See* V.S. Kopko ¶ 4. The Board has considered rejected a similar claim, finding that a petition for a preliminary injunction "to provide a reasonable degree of certainty for planning – is too speculative a reason for finding irreparable harm under 49 U.S.C. § 721(b)(4)." *DeBruce Grain v. Union Pacific Railroad Co.* STB Docket No. 42023 (served April 27, 1998), slip op at 3.

1. <u>CSXT Would Be Harmed if the Requested Injunction Were Issued.</u>

At bottom, the Petition seeks to shift the economic burden of financing DuPont's rail transportation costs to CSXT during the pendency of DuPont's challenge to CSXT's common carrier rates. CSXT would be harmed to the exact extent of the relief sought by DuPont. The costs that DuPont would bear in the absence of an injunction would be borne by CSXT if the Board were to issue an injunction suspending CSXT's lawfully established rate. *See Davenport*, 166 F.3d at 367 (denying a preliminary injunction when the balance of harms was equal to both parties); *Serono Labs., Inc. v. Shalala*, 158 F.3d 1313, 1326 (D.C. Cir. 1998) (denying a preliminary injunction when the "balance of harms result[ed] roughly in a draw"). If the Board were to grant the requested relief, CSXT would suffer monetary injury in precisely the amount of the costs that DuPont would avoid.[29] The critical difference is that Congress has weighed the competing interests of shippers and carriers and struck the balance in favor of the carriers' rulemaking initiative. *See* 49 U.S.C. § 10701(c).

The Board has stated that the balance should usually be struck in favor of carriers' right to establish rail rates: "[o]rdinarily, where there is a dispute about the appropriate rate, the equities favor allowing the carrier's rate to control pending [the Board's] resolution of the dispute." *Arizona Pub. Serv. Co. v. Burlington N. & Santa Fe Ry. Co.*, STB Docket No. 42077, 2003 WL 21055725, at *5 (served May 12, 2003). By statute, rail carriers have the right to establish and maintain any lawful rate, unless and until the Board finds such a rate exceeds a maximum reasonable level. *See* 49 U.S.C. § 10701(c). The extraordinary relief sought by DuPont would deprive CSXT of that statutory right based *solely* on the allegations of its

[29] Importantly, this element of the test does *not* require that the nonmoving party would be *irreparably* harmed by an injunction. Rather, it requires the Petitioner to show that "an injunction will not substantially harm other parties." *Estate of Coll-Monge v. Inner Peace Movement*, 524 F.3d 1341, 1349 (D.C. Cir. 2008).

Complaint and Petition, before any discovery; before the Board has found it has jurisdiction; before any SAC evidence has been filed; and long before the Board makes a rate reasonableness determination on the merits. The bare allegations of the Complaint and the general, untested allegations of the statements submitted in support of the Petition are wholly inadequate to deny CSXT its express statutory right to establish any lawful rate, and charge and collect that rate during the pendency of a rate reasonableness challenge. Denial of this important statutory right would constitute an indisputable harm to CSXT. DuPont offers no argument or evidence to the contrary.

2. DuPont Has Not Shown that The Public Interest Favors an Injunction.

Granting a preliminary injunction would not be in the public interest because it would prevent CSXT's exercise of the ratemaking right guaranteed by statute. A rail common carrier such as CSXT has the statutory right to establish rail transportation rates in the first instance. *See* 49 U.S.C. § 10701(c). Rail carriers' long-established "ratemaking initiative" is an integral part of the common carrier obligation, which requires a railroad to accept traffic tendered to it, including dangerous "toxic by inhalation" chemicals such as those at issue in the Petition. When Congress enacted ICCTA, it abolished the ICC's former power to suspend and investigate common carrier rates. *See supra* at 12-13. Section 10701 embodies Congress' determination that it is in the public interest that rail carriers have the right to establish, charge, and collect the rate it finds appropriate for common carrier service, unless and until the Board finds that rate exceeds a maximum reasonable level. Here, DuPont seeks the Board's extraordinary intervention to deny CSXT its statutory right to establish the rates it will charge to will fulfill its common carrier obligation, merely because DuPont does not wish to absorb CSXT's incremental rate increase during the pendency of this case.

DuPont has utterly failed to prove it is likely to prevail on the merits of this complex case, or that it will suffer irreparable harm in the absence of the unprecedented relief it seeks. Neither the fact that DuPont wishes to avoid paying CSXT's rates during this case, nor its vague claims that [ ] if their costs increase, is sufficient to overcome Congress' authoritative determination that the public interest is best advanced by investing rail common carriers with a ratemaking right. The public interest, like the other three essential factors, militates against granting the Petition.

CONCLUSION

DuPont has not satisfied any of the essential requirements for issuance of the extraordinary injunctive relief it seeks, and no such relief is appropriate. Accordingly, the Board should promptly deny the Petition for Injunctive Relief.

Respectfully submitted,

Peter J. Shudtz
Paul R. Hitchcock
Steven C. Armbrust
John P. Patelli
CSX Transportation Inc.
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Counsel to CSX Transportation, Inc.

Dated: December 17, 2008

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of December, 2008, I caused a copy of the foregoing Reply of CSX Transportation, Inc. to E.I. du Pont de Nemours and Company's Petition for Injunctive Relief to be served on the following parties by hand or more expeditious method of delivery:

Nicholas J. DiMichael
Jeffrey O. Moreno
Jennifer M. Gartlan
Eric N. Heyer
Thompson Hine LLP
1920 N Street, NW, Suite 800
Washington, DC 20036

Noah Clements

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BEFORE THE
SURFACE TRANSPORTATION BOARD

E.I. DUPONT DE NEMOURS AND COMPANY *Complainant*, v. CSX TRANSPORTATION, INC. *Defendant*.	)	Docket No. NOR 42112

VERIFIED STATEMENT OF BRUCE A. KUZMA
CSX TRANSPORTATION, INC.

1. My name is Bruce A. Kuzma, and I am the Director of Sales for CSX Transportation, Inc. ("CSXT"). I have held that position for seven years. In this capacity, my responsibilities include providing leadership and guidance to a team of sales professionals, each of whom manage a portfolio of chemical accounts. I also provide direction and advice to my team in packaging, presenting, and negotiating large contracts. Finally, I assist in developing sales strategies that highlight the value of doing business with CSXT. My responsibilities require me to be apprised of current trends in the marketplace, including but not limited to potential transportation alternatives to CSXT rail service. I submit this Verified Statement in response to E.I. DuPont de Nemours and Company's ("DuPont") Petition for Injunctive Relief, which asserts that certain of CSXT's rates for rail transportation should be suspended because of their impact on DuPont's facilities at Edge Moor, Delaware and Wurtland, Kentucky. DuPont's claims are inconsistent with the realities of a marketplace in which DuPont and its customers have a variety of transportation alternatives to CSXT's rail transportation service.

2. DuPont operates a facility at Edgemoor, Delaware that produces titanium dioxide ("the Edge Moor facility" or "Edge Moor"). The Edge Moor facility is solely served by Norfolk Southern Railway Company ("NS"). DuPont receives chlorine at Edge Moor via a CSXT-NS joint line move from Niagara Falls, New York. CSXT moves chlorine an a short haul from a plant in Niagara Falls to a Buffalo. NY interchange with NS, which then transports the traffic to the Edge Moor facility.

3. While DuPont claims that the rate for the rail transportation of chlorine from Niagara Falls to Edge Moor is unduly high. the Edge Moor facility plainly has multiple alternative sources for chlorine that belie any claim that DuPont has no choice but to pay CSXT's rate. For example, NS could transport chlorine to DuPont via single-line service. On the NS network alone, DuPont could obtain chlorine from the Olin plants at Augusta, GA or Charleston, TN, each of which could be moved to Edge Moor via single-line NS service.

4. Alternatively, DuPont could obtain chlorine from the Olin facility at Becancour, Quebec, which is served by Canadian National, or the West Lake facility in Calvert City, Kentucky served by the Paducah & Louisville. These are but a few examples of the dozens of alternative sources for chlorine that are readily available to DuPont. DuPont's suggestion that it faces irreparable harm because of CSXT's rate for shipping chlorine from Niagara Falls is belied by the fact that it has multiple other sources for chlorine.

5. [[

]]

6. CSXT also transports titanium dioxide from Edge Moor to DuPont's facility at New Johnsonville. TN in a joint line move with NS. DuPont's assertion that CSXT's December 1 rate increase will cause irreparable harm to Edge Moor ignores the many other factors affecting Edge Moor's commercial viability. Based on my knowledge of the industry, I understand that DuPont is the world's largest and lowest cost producer of titanium dioxide. DuPont's plant at New Johnsonville, Tennessee is the largest-capacity titanium dioxide plant in the world, and its Delisle. Mississippi plant is reported to have the lowest costs in the world. In contrast. Edge Moor is an older facility that began producing titanium dioxide in 1931, and in the 1950s was the first plant in the world to use the chloride process. I understand that DuPont's New Johnsonville and Delisle plants are newer than the Edge Moor plant, use more advanced technology and equipment. and are able to produce a greater variety of titanium dioxide products than Edge Moor.

7. In addition. DuPont asserts that CSXT's rate for transporting fuming sulfuric acid ("oleum") from DuPont's Wurtland facility to INDSPEC at Petrolia. PA causes irreparable harm. It is my understanding, however, that INDSPEC does not rely solely on DuPont's Wurtland facility for oleum. DuPont occasionally ships oleum to INDSPEC from DuPont's Miami Fort and/or North Bend, OH plant. In addition, there are a number of other producers capable of producing oleum, including Marsulex at Toledo. OH, Honeywell at Hopewell. VA. Rhodia at Hammond, IN, General Chemical at Augusta, GA, and Chemtrade at Sudbury, ON. Many of these producers have additional locations west of the Mississippi where

they are also capable of producing oleum. In short, INDSPEC has multiple sources from which it could obtain oleum. Any argument that INDSPEC's business may be damaged as a result of the freight rate for transporting oleum from Wurtland ignores these alternatives.

VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this testimony.

Executed on this 16th day of December, 2008

Bruce A. Kuzma

Bruce Kuzma

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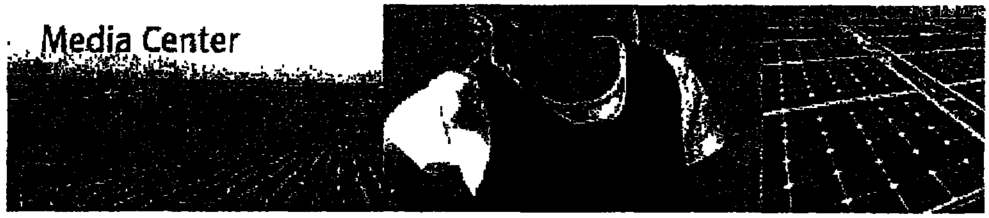

News Releases

DuPont Takes Aggressive Actions to Strengthen Competitiveness and Increase Cash Flow

Contact: Lori Captain
302-773-3551

Company Provides Fourth Quarter 2008 and Full Year 2009 Earnings Guidance

WILMINGTON, Del., Dec. 4, 2008 — DuPont today announced further actions to address current market challenges and strengthen the company's competitiveness in 2009, including continued focus on maximizing cash flow, and provided earnings guidance for the fourth quarter 2008 and the full year 2009.

A steep global decline in construction and motor vehicle sales and consumer spending has resulted in declining industrial production, intensified by inventory reductions across most supply chains. These conditions have precipitated a sharp downturn in demand during the fourth quarter.

"We have taken immediate and aggressive actions to maximize cash flow by reducing cost, working capital and capital expenditures in response to current market challenges," said DuPont Chairman and CEO Charles O. Holliday, Jr "We will build on our strong financial and market positions and continue prudent financial discipline in navigating through this challenging economic environment. We are providing 2009 earnings guidance and underlying assumptions in our effort to be as transparent as possible with respect to the current and expected impact of the global recession. We are, however, realistic about the potential for further change and we will adjust actions as conditions warrant."

Summary

- **Full-year 2008 free cash flow is expected to be about $1.3 billion, as planned, with working capital improvements offsetting earnings decline. Free cash flow will increase to about $2.5 billion in 2009, reflecting a planned $1 billion net working capital reduction and a 10 to 20 percent reduction in capital spending.**
- **DuPont is taking actions to deliver in 2009 $600 million in fixed cost productivity improvements, excluding volume and currency, in addition to about $130 million in cost reductions from its restructuring plan. This compares to an original 2009 cost productivity plan of $200 million.**
- **DuPont has commenced a restructuring plan with an associated pre-tax charge of about $500 million in the fourth quarter resulting in a pre-tax earnings increase of about $130**

million for 2009, and approximately a $250 million annual run rate.
The company expects a loss of $.20 to $.30 per share for the fourth quarter 2008, excluding an estimated $.40 per share significant item charge for the company's restructuring plan. On a reported basis, the company expects fourth quarter earnings to be a loss of $.60 to $.70 per share.
Full-year 2009 earnings are expected to be about $2.25 to $2.75 per share.

Restructuring Plan

DuPont's plan is intended to better position a number of its market leading global businesses for future growth. Approximately 2,500 employee positions will be eliminated, principally in businesses that support the motor vehicle and construction markets in Western Europe and the United States. In addition, certain assets will be rationalized to improve future competitiveness A pre-tax charge totaling approximately $500 million, or $.40 per share, will be taken in the fourth quarter 2008 for the restructuring plan These actions are expected to produce a pre-tax earnings increase of about $130 million for 2009 and about a $250 million annual run rate.

Accelerated Cost and Working Capital Productivity

DuPont is accelerating productivity programs started earlier this year to deliver $600 million fixed cost pre-tax earnings benefit and $1 billion in net working capital reduction in 2009. Specific actions include reducing 4,000 contractors by year-end 2008 with additional contractor reductions in 2009, implementing work schedule reductions at select locations, adjusting production to market conditions and redeploying more than 400 employees to productivity projects aimed at accelerating reductions of working capital and operating costs.

4th Quarter 2008 Earnings Guidance

The company expects a loss of $.20 to $.30 per share for the fourth quarter 2008, excluding an estimated $.40 per share significant item charge for the company's restructuring plan. Sharply lower sales volumes and resulting lower plant operating rates contributed to the reduced outlook. Fourth quarter sales are expected to be at least 15 percent lower than fourth quarter 2007, principally reflecting a significant decline in worldwide sales volumes. On October 22, the company provided fourth quarter earnings guidance of $.20 to $.25 per share. The company continues to expect year end free cash flow of about $1.3 billion

2009 Earnings and Cash Outlook

The company expects 2009 earnings in the range of $2.25 to $2.75 per share, anticipating the current global recession will continue well into 2009. Actions to increase cash flow are expected to generate about $2.5 billion in free cash flow in 2009, about double the level anticipated in 2008. Capital expenditures are expected to be in the range of $1.6 to $1.8 billion, compared to $2.0 billion for 2008. Growth investments will continue for high-growth, high-margin businesses including seed products and photovoltaics. Pre-tax cost savings from the restructuring plan and productivity projects are expected to be about $730 million in 2009. DuPont anticipates a $ 40 to $.50 per share increase in pension expense. While favorable conditions in global agriculture markets are expected in 2009, the company's revenue growth in 2009 will be limited by expected lower demand for non-agriculture related products and the impact of currency exchange rates.

"DuPont has market-leading global businesses, solid financial fundamentals, and strong growth opportunities," Holliday said. "We are aggressively managing every facet within our control to maximize cash and assure we are positioned in the long term to take advantage of above-trend growth opportunities in key markets, especially where our science -based products position us among the market leaders."

Use of Non-GAAP Measures

Management believes that certain non-GAAP measurements, such as income excluding significant items, are meaningful to investors because they provide insight with respect to ongoing operating results of the company. Such measurements are not recognized in accordance with generally accepted accounting principles (GAAP) and should not be viewed as an alternative to GAAP measures of performance. Reconciliations of non-GAAP measures to GAAP are as follows.

	Forecasted ($ billions)	
	2008	2009
Cash provided by operating activities	3.3	4.2
Less: Purchases of property, plant and equipment	1.9	1.7
Less: Investments in affiliates	0.1	-
Free cash flow	1.3	2.5

The company has scheduled a webcast for investors at 10 a.m. (EST) today to address these announcements The live webcast can be accessed at www.dupont.com under the Investors Center or the call be accessed by calling 785-424-1052 at least 15 minutes prior to the call and ask for reservation # 7UPDATE09.

DuPont is a science company. Founded in 1802, DuPont puts science to work by creating sustainable solutions essential to a better, safer, healthier life for people everywhere. Operating in more than 70 countries, DuPont offers a wide range of innovative products and services for markets including agriculture, nutrition, electronics, communications, safety and protection, home and construction, transportation and apparel.

Forward-Looking Statements: This news release contains forward- looking statements based on management's current expectations, estimates and projections. The company does not undertake to update any forward-looking statements as a result of future developments or new information. All statements that address expectations or projections about the future, including statements about the company's strategy for growth, product development, market position, expected expenditures and financial results are forward-looking statements. Some of the forward-looking statements may be identified by words like "expects," "anticipates," "plans," "intends," "projects," "indicates," and similar expressions. These statements are not guarantees of future performance and involve a number of risks, uncertainties and assumptions. Many factors, including those discussed more fully elsewhere in this release and in documents filed with the Securities and Exchange Commission by DuPont, particularly its latest annual report on Form 10-K and quarterly report on Form 10-Q, as well as others, could cause results to differ materially from those stated. These factors include, but are not limited to changes in the laws, regulations, policies and economic conditions, including inflation, interest and foreign currency exchange rates, of countries in which the company does business; competitive pressures; successful integration of structural changes, including restructuring plans, acquisitions, divestitures and alliances; cost of raw materials, research and development of new products, including regulatory approval and market acceptance; seasonality of sales of agricultural products; and severe weather events that cause business interruptions, including plant and power outages, or disruptions in supplier and customer operations.

# # #

12/4/08

back to news releases

3

delawareonline

December 5, 2008

Edge Moor pigment plant avoids layoffs

Company has operated facility since 1929

By JEFF MONTGOMERY
The News Journal

DuPont's largest remaining Delaware plant escaped a work force reduction the company announced Thursday, with officials saying the job cuts mainly targeted automotive-related products.

The company's Edge Moor titanium dioxide plant makes a slurry-like, "super-white" pigment product used for the paper industry in North America, Europe, Asia and Latin America.

"We've had no impact on our DuPont employees" at Edge Moor, said Mike Welch, plant manager. "But we have had some softening in our markets, and we are attempting to adjust our costs appropriately. So we have had some reduction in our contract work."

About 200 regular employees and 100 contractors work at Edge Moor, which is northeast of Wilmington along the Delaware River just south of Fox Point State Park. The plant has been producing white pigment since 1925, and was acquired by DuPont in 1929. Edge Moor went on to pioneer a new method for making titanium dioxide, considered more efficient and cleaner, and DuPont went on to become a world leader in production of the compound and chemical offshoots.

The company makes titanium dioxide at several other plants around the nation and world, but has a permit to manufacture up to 190,000 tons of titanium dioxide annually in Delaware. Edge Moor uses a process that includes combining titanium ore and chlorine gas under high temperatures. Another product produced at the plant, titanium tetrachloride, is sold in smaller amounts as a highly reactive chemical used in chemical processes by other industries.

DuPont supplies about 22 percent of the $6.3 billion global market for titanium dioxide, according to Tronox Inc., a company that ranks third in that industry.

The company's largest investments in titanium dioxide production have gone to plants in the south or overseas in recent years. State regulators in 2006 approved a process change that allowed DuPont to exploit new markets for the super-white coatings made in Delaware.

Edge Moor employed about 875 workers during its high point in the mid-1970s. Operations were complicated in the late 1990s, when DuPont and federal regulators found that some processes at Edge Moor produced waste tainted with dioxins. The company has since drastically reduced the output of the waste.

4

E. I. du Pont de Nemours and Company

Consolidated Financial Statements

CONSOLIDATED INCOME STATEMENTS
(Dollars in millions, except per share)

For The Year Ended December 31,	2007	2006	2005
Net sales	$29,378	$27,421	$26,639
Other income, net	1,275	1,561	1,852
Total	30,653	28,982	28,491
Cost of goods sold and other operating charges	21,565	20,440	19,683
Selling, general and administrative expenses	3,364	3,224	3,223
Amortization of intangible assets	213	227	230
Research and development expense	1,338	1,302	1,336
Interest expense	430	460	518
Separation activities – Textiles & Interiors		-	(62)
Total	26,910	25,653	24,928
Income before income taxes and minority interests	3,743	3,329	3,563
Provision for income taxes	748	196	1,470
Minority interests in earnings (losses) of consolidated subsidiaries	7	(15)	37
Net Income	$ 2,988	$ 3,148	$ 2,056
Basic earnings per share of common stock	$ 3.25	$ 3.41	$ 2.08
Diluted earnings per share of common stock	$ 3.22	$ 3.38	$ 2.07

See Notes to the Consolidated Financial Statements beginning on page F-8

5

E. I. du Pont de Nemours and Company
Consolidated Income Statements
(Dollars in millions, except per share amounts)

SCHEDULE A

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2008	2007	2008	2007
Net sales	$ 7,297	$ 6,675	$ 24,709	$ 22.395
Other income, net	420	365	1,057	1,045
Total	7,717	7,040	25,766	23,440
Cost of goods sold and other operating charges [a]	5,916	5,161	18,298	16,357
Selling, general and administrative expenses	873	804	2,794	2.534
Research and development expense	360	332	1,050	979
Interest expense	98	113	272	320
Total	7,247	6,410	22.414	20,190
Income before income taxes and minority interests	470	630	3,352	3,250
Provision for income taxes	98	102	706	802
Minority interests in earnings of consolidated subsidiaries	5	2	10	5
Net income	$ 367	$ 526	$ 2,636	$ 2,443
Basic earnings per share of common stock	$ 0.40	$ 0.57	$ 2.91	$ 2 64
Diluted earnings per share of common stock	$ 0.40	$ 0.56	$ 2.89	$ 2.61
Dividends per share of common stock	$ 0.41	$ 0.37	$ 1.23	$ 1.11
Average number of shares outstanding used in earnings per share (EPS) calculation:				
Basic	903.134.000	921,106,000	902,131,000	922,958,000
Diluted	907,950,000	929,316,000	908,073.000	931,774.000

(a) See Schedules of Significant Items for additional information.

E. I. du Pont de Nemours and Company
Consolidated Balance Sheets
(Dollars in millions, except per share amounts)

SCHEDULE A (continued)

	September 30, 2008	December 31, 2007
Assets		
Current assets		
Cash and cash equivalents	$ 1,993	$ 1.305
Marketable securities	152	131
Accounts and notes receivable, net	7,438	5,683
Inventories	5,635	5.278
Prepaid expenses	161	199
Income taxes	683	564
Total current assets	16,062	13,160
Property, plant and equipment, net of accumulated depreciation (September 30, 2008 - $16,509; December 31, 2007 - $15,733)	11,083	10,860
Goodwill	2,084	2,074
Other intangible assets	2,750	2,856
Investment in affiliates	939	818
Other assets	5,210	4,363
Total	$ 38,128	$ 34,131
Liabilities and Stockholders' Equity		
Current liabilities		
Accounts payable	$ 2,942	$ 3,172
Short-term borrowings and capital lease obligations	2,953	1,370
Income taxes	197	176
Other accrued liabilities	3,329	3,823
Total current liabilities	9,421	8,541
Long-term borrowings and capital lease obligations	7,402	5,955
Other liabilities	7,233	7,255
Deferred income taxes	955	802
Total liabilities	25,011	22.553
Minority interests	443	442
Commitments and contingent liabilities		
Stockholders' equity		
Preferred stock	237	237
Common stock, $0.30 par value; 1,800,000,000 shares authorized; issued at September 30, 2008 - 989,402,000; December 31, 2007 - 986,330,000	297	296
Additional paid-in capital	8,368	8,179
Reinvested earnings	11,458	9,945
Accumulated other comprehensive loss	(959)	(794)
Common stock held in treasury, at cost (87,041,000 shares at September 30, 2008 and December 31, 2007)	(6,727)	(6,727)
Total stockholders' equity	12.674	11,136
Total	$ 38.128	$ 34,131

E. I. du Pont de Nemours and Company
Condensed Consolidated Statements of Cash Flows
(Dollars in millions)

SCHEDULE A (continued)

	Nine Months Ended September 30, 2008	Nine Months Ended September 30, 2007
Cash provided by operating activities	$ 494	$ 1,426
Investing activities		
Purchases of property, plant and equipment	(1.406)	(1,019)
Investments in affiliates	(53)	(27)
Payments for Businesses (Net of Cash Acquired)	(72)	(13)
Other investing activities - net	(151)	39
Cash used for investing activities	(1,682)	(1,020)
Financing activities		
Dividends paid to stockholders	(1,123)	(1,037)
Net increase in borrowings	2,974	1,330
Other financing activities - net	57	(1,336)
Cash provided by (used for) financing activities	1,908	(1,043)
Effect of exchange rate changes on cash	(32)	32
Increase (decrease) in cash and cash equivalents	688	(605)
Cash and cash equivalents at beginning of period	1,305	1,814
Cash and cash equivalents at end of period	$ 1,993	$ 1,209

6

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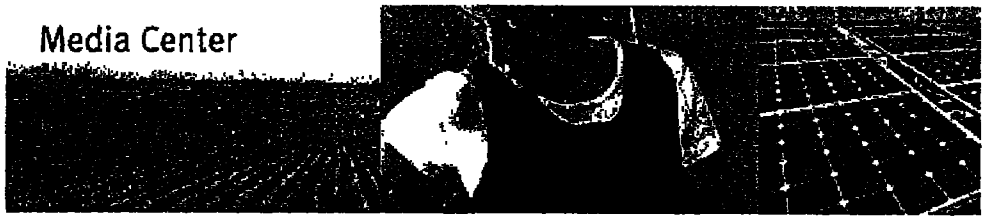

News Releases

DuPont Declares Fourth Quarter Dividend

Contact: Anthony Farina
302-773-4418

Wilmington, Del., October 29, 2008 - DuPont declared a fourth quarter common stock dividend of 41 cents per share, payable December 12, to stockholders of record November 14. This dividend is the same as what was paid in the third quarter 2008. **This is the 417th consecutive quarterly dividend since the company's first dividend in the fourth quarter of 1904.**

Regular quarterly dividends of $1.12-1/2 per share on the $4.50 series preferred stock and 87-1/2 cents per share on the $3.50 series preferred stock also were declared, both payable January 23, 2009, to stockholders of record January 9, 2009.

DuPont is a science-based products and services company. Founded in 1802, DuPont puts science to work by creating sustainable solutions essential to a better, safer, healthier life for people everywhere. Operating in more than 70 countries, DuPont offers a wide range of innovative products and services for markets including agriculture and food, building and construction; communications; and transportation.

10/29/08

back to news releases

7

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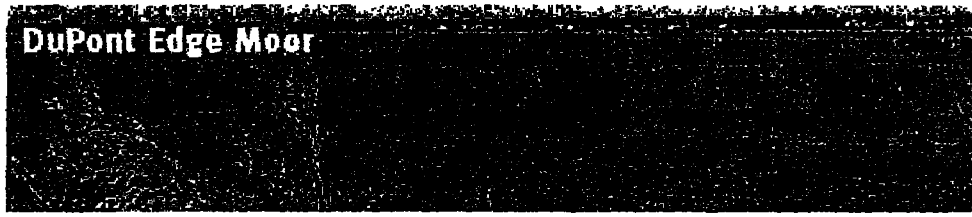

DuPont Home « Edge Moor Site « Edge Moor Home

DuPont Operations

Edge Moor

DuPont Edge Moor Launches Community Website

Welcome to the DuPont Edge Moor facility's website. The facility is located in northern New Castle County, Delaware, a short distance from DuPont corporate headquarters in Wilmington. DuPont is the world's largest producer of Titanium Dioxide (TiO_2), a white pigment and whitening agent used mainly in the paper, plastics and coatings industries. The site has been operating for more than 80 years and today employs approximately 200 DuPont employees and more than 100 contract partners.

The site proudly offers competitive salaries and benefits and the workforce works hard all day, every day to adhere to the highest standards of safe operation and the protection of the environment. site employees and surrounding communities

Mission

To be a highly reliable supplier of quality titanium dioxide and ferric chloride products while achieving a safe, respectful, sustainable, low cost, and flexible work environment in order to promote utilization of available production capacity and to be globally competitive.

Recent News

DuPont Edge Moor Plant Wins Energy Conservation Award

Award-Winning Project Removes 3,500 Metric Tons of Emissions From Local Air

All News Releases

More Information

Shelter in Place [.pdf]

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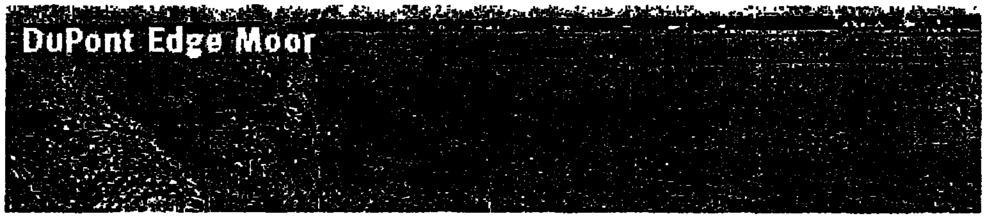
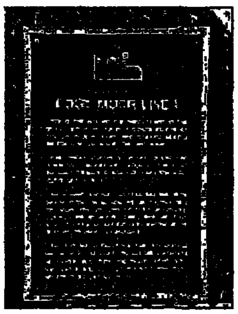


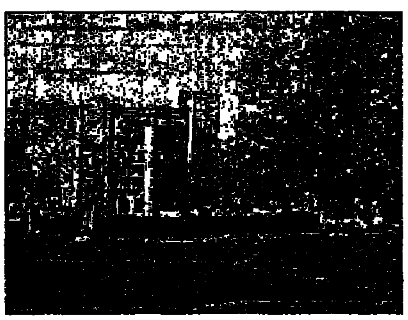
About Our Plant

Establishing Our History



Located on the banks of the Delaware River, the Edge Moor site has been producing quality white pigment for the paint and paper markets since 1925. Initially owned and managed by the Krebs Pigment Company. DuPont acquired Krebs and the Edge Moor plant in 1929.

Edge Moor entered the titanium dioxide (TiO2) business in 1931 when it purchased a TiO2 patent-holding company, the Commercial Pigments Corporation, and began offering a line of TiO2 products. In 1951, when the demand for TiO2 surged following World War II, DuPont engineers and scientists developed an alternate, more economical and environmentally responsible "chloride process" for manufacturing the white pigment.



Introduced first at the Edge Moor plant, the new process gradually replaced the sulfate process at all DuPont Ti-Pure® plants as they expanded to meet ever-increasing demand through the 1980s.

At the height of production in 1975, the plant operated two manufacturing lines and employed approximately 850 employees. In 1980, DuPont streamlined Edge Moor's operations when one of the two manufacturing lines was shutdown.

Today, a dedicated team of approximately 200 DuPont employees and 100 contract partners safely operate the Edge Moor facility.

Together with a mining facility in Starke, Florida and TiO2 plants in DeLisle, Mississippi; New Johnsonville, Tennessee; Kuan Yin, Taiwan and Altamira, Mexico, DuPont Titanium Technologies has positioned

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DuPont Edge Moor Plant Wins Energy Conservation Award

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itself as the world's largest manufacturer of titanium dioxide, producing about a quarter of the world's TiO_2 pigments.

Of Note

DuPont Edge Moor also qualifies as something of an American literary landmark. From 1927 until 1929, writer F. Scott Fitzgerald and his wife leased Ellerslie, an estate located on the Delaware riverfront, where the plant now stands. A barn dating back to 1821, part of the original Ellerslie estate, still stands on the grounds of the plant.

Steel girders for the Brooklyn Bridge were manufactured on the Edge Moor site when the land housed the former Edge Moor Iron Company.

Do you have an upgrade or comment about this page? Please contact Corporate Information Center

8

Region/Country	Effective Date (2008)	Amount
North America	June 15	$100/ton
EU	July 1	50 Euros/tonne
Middle East, Sub-Sahara Africa and Eastern European markets	July 1 October 1	$100/tonne $100/tonne
Western and Central Europe, Turkey, Greece and North Africa (Maghreb countries)	July 1	40 Euros/tonne (Energy Surcharge)
Asia (except China and Japan)	July 1	$150 USD per ton
China	July 1	1.5RMB/kg
Latin America (except Brazil)	July 1	$150 USD per tonne
Brazil	July 1	$130 (US$) per metric ton for its indent sales $150 (US$) per metric ton for its local/resale sales in Brazil

DUPONT TITANIUM TECHNOLOGIES ANNOUNCES A PRICE INCREASE

SECTION: NATIONWIDE INTERNATIONAL NEWS

LENGTH: 540 words

MEDIA RELEASE PR30537

DuPont Titanium Technologies Announces a Price Increase for Titanium Dioxide Products in All Regions

WILMINGTON, Delaware, June 4 /PRNewswire-AsiaNet/ - Business Cites Rising Costs of Energy, Raw Materials and Transportation DuPont (NYSE:DD) has announced that prices for its Ti-Pure(R) titanium dioxide (TiO2) products will increase by July 1 due to rapid and substantial increases in the costs of energy, raw materials and transportation. While specifics will vary by region, customers can expect the rapid implementation of previously announced price increases, additional increases and, in some geographies, energy-related surcharges.

"The need for immediate structural improvement in prices is unprecedented," said Richard C. Olson, vice president and general manager -- DuPont Titanium Technologies (DTT).

"We expect to increase the global pricing structure by as much as 8 per cent in coming weeks."

Olson said price increases announced during the first half of 2008 were intended to compensate for expected increases in energy, raw materials and transportation costs, but the magnitude of recent increases in these costs led DTT to take these pricing actions.

"It is imperative that we pass along some of these unanticipated costs if we are to continue investing in our TiO2 business to sustain ongoing operations," Olson said. "Of course, we plan aggressive cost, productivity and energy improvements as well, but realistically, these initiatives simply cannot overcome the negative effects of external forces on our production of TiO2."

DuPont Titanium Technologies will make regional announcements to inform customers about specific pricing actions in their areas.

DuPont Titanium Technologies is the world's largest manufacturer of titanium dioxide, serving customers globally in the coatings, paper and plastics industries. The company operates plants at DeLisle, Miss.; New Johnsonville, Tenn.; Edge Moor, Del.; Altamira, Mexico; and Kuan Yin, Taiwan; all of which use the chloride manufacturing process.

The company also operates a plant in Uberaba, Brazil. for finishing titanium dioxide and a mine in Starke, Fla. Technical service centers are located in Uberaba, Brazil; Mexico City, Mexico; Mechelen, Belgium; Moscow, Russia; Kuan Yin, Taiwan; Ulsan. Korea; Wilmington, Del.; and Shanghai, China, to serve the European, Middle Eastern, United States, Asian and Latin America markets.

DuPont is a science company. Founded in 1802, DuPont puts science to work by creating sustainable solutions essential to a better, safer, healthier life for people everywhere. Operating in more than 70 countries, DuPont offers a wide range of innovative products and services for markets including agriculture, nutrition, electronics, communications, safety and protection, home and construction, transportation and apparel.

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9

DuPont Titanium Technologies Raises Titanium Dioxide Prices Due to Rising Cost Increases

LENGTH: 434 words

DATELINE: WILMINGTON, Del. June 19

WILMINGTON, Del., June 19 /PRNewswire-FirstCall/ -- DuPont Titanium Technologies today announced its second global price increase for titanium dioxide in two weeks in an attempt to keep pace with rapidly rising costs of energy and raw materials.

Increases announced today become effective on July 15. These increases, of approximately $150 (USD) per ton, are in addition to those announced two weeks ago. Those increases take effect on July 1

10

DuPont Titanium Technologies Announces a Price Increase for Ti-Pure(R) Titanium Dioxide Products in North America

LENGTH: 448 words

DATELINE: WILMINGTON, Del. Sept. 2

WILMINGTON, Del., Sept. 2 /PRNewswire-FirstCall/ -- DuPont Titanium Technologies today announced a price increase for all DuPont(TM) Ti-Pure(R) titanium dioxide grades sold in North America.

Effective Sept. 2, North American (United States and Canada) prices for all DuPont titanium dioxide grades will increase by 8 cents per pound (USD). This increase is in addition to the price increases and paper energy surcharges previously announced.

"Demand for TiO_2 remains strong. Higher raw material, energy and transportation costs continue to impact our manufacturing expenditures," said Ian Edwards, global business director - DuPont Titanium Technologies. "Energy efficiency and productivity initiatives have offset some of this impact, but this price increase is necessary for continued investment in global fulfillment, quality offerings and value to customers."

"The velocity and volatility of cost increases will require DuPont Titanium Technologies to renegotiate contracts that provide a price protection period," said Edwards. "At a time when the market for many of our purchased raw materials and services is extremely volatile, we cannot afford to delay our ability to pass on these increases."

DuPont Titanium Technologies is the world's largest manufacturer of titanium dioxide, serving customers globally in the coatings, paper and plastics industries. The company operates plants at DeLisle, Miss.; New Johnsonville, Tenn.; Edge Moor, Del.; Altamira, Mexico; and Kuan Yin, Taiwan; all of which use the chloride manufacturing process. The company also operates a plant in Uberaba, Brazil, for finishing titanium dioxide and a mine in Starke, Fla. Technical service centers are located in Uberaba, Brazil; Mexico City, Mexico; Mechelen, Belgium; Kuan Yin, Taiwan; Ulsan, Korea; Wilmington, Del.; and Shanghai, China, to serve the European, Middle Eastern, United States, Asian and Latin America markets.

11

Chemical News & Intelligence

October 1, 2008 Wednesday

US DuPont to implement additional TiO2 surcharge

LENGTH: 211 words

HOUSTON (ICIS news)--[1]DuPont Titanium Technologies plans to implement its third energy surcharge since June for titanium dioxide (TiO2) sold into the North American paper and board market, the US pigment producer said on Wednesday.

The world's largest producer of TiO2 said it will add a 4 cent/lb ($88/tonne) fee to product orders effective 1 November.

DuPont earlier this year announced a 6 cent/lb energy surcharge for 1 August and a 4 cent/lb surcharge for 1 July.

"Raw material and input costs continue to escalate as energy costs remain elevated," said E Bryan Snell, global business director. The surcharge, he said, is needed to offset continued high production and transportation costs.

In North America, TiO2 contract prices were 104-114 cents/lb ($2,293-2,513, €1,628-1,784/tonne) FD (free delivered), according to global chemical market intelligence service [2]ICIS pricing.

Other US producers of TiO2 include Cristal, Hunstman, Tronox and Kronos.

12

December 5, 2008

DuPont to cut jobs, idle plants

By ANDREW EDER
The News Journal

DuPont Co. is slashing jobs and cutting costs as the company navigates through a global recession it expects to continue through much of 2009.

The company said Thursday it plans to cut 2,500 jobs -- about 4 percent of its work force -- in the next year. DuPont is also cutting 4,000 contract workers by the end of this year, with more contractors expected to be cut next year.

DuPont said it would idle more than 100 production lines at plants, permanently scale back or close 10 others and step up cost-savings programs with the goal of freeing up cash in the midst of financial and economic turmoil.

"These are obviously challenging times, and we have implemented a wave of actions focused on cash generation and getting our spending in line with lower demand," DuPont President Ellen Kullman said in a conference call with investors and reporters.

The job cuts will come mainly from DuPont businesses that support the slumping automotive and construction markets in the United States and Western Europe, although the company would not say which sites would lose positions.

The impact of the job cuts will be "minimal" in Delaware, with several business units and manufacturing positions likely affected, DuPont spokeswoman Michelle Reardon said.

DuPont employs about 8,000 of its 27,000 U.S. workers at several administrative, research and production sites in Delaware. No full-time workers at any of the state's production facilities are expected to be laid off in the job cuts, Reardon said.

About 550 of the cuts will take place in the U.S., where DuPont has 140 facilities, the company said. About 1,300 job cuts will be in Western Europe, with the remainder spread across Latin America, Asia, and Canada

The outlook is less clear for DuPont's contract workers, which number between 12,000 and 15,000. DuPont has about 60,000 full-time employees globally.

DuPont Chairman and CEO Charles Holliday Jr. said the majority of downsized contractors would be in manufacturing jobs.

One contract worker, who did not give his name, told The News Journal that nearly 20 contract workers were let go Oct. 31 from a DuPont plant in Newark that makes Kalrez rubber parts.

Jim Rowe, president of Local 943 of the United Steelworkers, which represents about 500 workers at DuPont's Chambers Works in Deepwater, N.J., said many of the contractors at the sprawling plant were let go in the last two weeks.

Rowe said DuPont management met with union officials Thursday morning before the company made its announcement. He said the plant, which makes several products for the auto market, has seen falling demand for its products.

DuPont officials said the layoffs won't affect Chambers Works or the company's Edge Moor plant just north of Wilmington at this time.

"We kind of knew this was coming," Rowe said of Thursday's announcement.

About 1,300 DuPont workers will fill positions left vacant by contract workers, and 400 DuPonters will be reassigned to work on "mega-projects" to improve productivity, the company said.

DuPont hopes to cut fixed costs next year by $600 million, triple its earlier goal. The company also expects a $130 million boost to profits from its restructuring plan.

Kullman, who is set to take over as CEO in January, said the company would stop all discretionary spending and slow or cancel projects that are not "absolutely critical."

"Any increase in salary and professional employee pay will be driven by unique needs," Kullman said on the conference call.

DuPont, like other chemical and material makers, has been hit hard as construction has slowed and consumer demand has sagged across the world.

The company sells auto paint, rubber and plastic parts, Tyvek home wrap, Corian countertops and other supplies for the automotive and housing markets. In recent years, DuPont has built up its agriculture business and invested in high-growth areas like photovoltaics in an effort to become less sensitive to economic downturns.

But DuPont's coatings and performance materials units, which sell into the housing and auto markets, have suffered the steepest sales declines of the company's five business units, said DuPont Chief Financial Officer Jeff Keefer.

"Although DuPont is making all the right long-term moves, they remain a cyclical company that is exposed to the economy," said Dan Ortwerth, an investment analyst with Edward Jones.

DuPont's guidance to investors showed how sharply the economic situation has deteriorated in recent weeks. In October, the company forecast fourth-quarter earnings of 20 cents to 25 cents a share.

On Thursday, DuPont said it now expects a loss of 20 cents to 30 cents a share in the quarter, along with a 40-cent-a-share charge for its restructuring plan. The company expects sales in the quarter to fall about 15 percent compared with a year ago.

For 2009, DuPont expects to earn $2.25 to $2.75, below the $2.88 average estimate of 15 analysts surveyed by Bloomberg.

"We expect 2009 to be a very challenging year," Keefer said.

DuPont's cutbacks come as Delaware employers are rapidly shedding jobs. The state's unemployment rate jumped to 5.4 percent in October, compared with 4.8 percent in September and 3.5 percent last year, and 24,000 state residents now are jobless.

John Stapleford, a senior economist with Moody's Economy.com, said the local economies that will thrive in the future will be the ones with a young, well-educated work force. Any job cuts from DuPont, Delaware's signature private employer, raise the threat of a "brain drain" in the state, he said.

"This is just another blow with regards to jobs that are higher paying, have good benefits and are the kinds of jobs that allow you to retain your younger people," Stapleford said.

Investors reacted calmly to Thursday's announcements, sending DuPont's stock up 8 cents to $23.69. Ortwerth said the market's reaction suggested that investors may have expected worse news from the industrial giant

"Nobody knows what the right assumptions are right now," he said.

Kullman said several DuPont businesses are in position to benefit from the various fiscal stimulus packages that governments around the world are implementing in response to the economic downturn.

Holliday said DuPont's long-term prospects are strong, and the company is in position to cope with the current situation.

"Our company is 206 years old," Holliday said. "We have managed through and grown after multiple wars and one Great Depression. It's in our DNA to manage through this effectively."

13

delawareonline

December 5, 2008

Edge Moor pigment plant avoids layoffs

Company has operated facility since 1929

By JEFF MONTGOMERY
The News Journal

DuPont's largest remaining Delaware plant escaped a work force reduction the company announced Thursday, with officials saying the job cuts mainly targeted automotive-related products.

The company's Edge Moor titanium dioxide plant makes a slurry-like, "super-white" pigment product used for the paper industry in North America, Europe, Asia and Latin America

"We've had no impact on our DuPont employees" at Edge Moor, said Mike Welch, plant manager "But we have had some softening in our markets, and we are attempting to adjust our costs appropriately. So we have had some reduction in our contract work."

About 200 regular employees and 100 contractors work at Edge Moor, which is northeast of Wilmington along the Delaware River just south of Fox Point State Park. The plant has been producing white pigment since 1925, and was acquired by DuPont in 1929. Edge Moor went on to pioneer a new method for making titanium dioxide, considered more efficient and cleaner, and DuPont went on to become a world leader in production of the compound and chemical offshoots.

The company makes titanium dioxide at several other plants around the nation and world, but has a permit to manufacture up to 190,000 tons of titanium dioxide annually in Delaware. Edge Moor uses a process that includes combining titanium ore and chlorine gas under high temperatures. Another product produced at the plant, titanium tetrachloride, is sold in smaller amounts as a highly reactive chemical used in chemical processes by other industries.

DuPont supplies about 22 percent of the $6 3 billion global market for titanium dioxide, according to Tronox Inc., a company that ranks third in that industry.

The company's largest investments in titanium dioxide production have gone to plants in the south or overseas in recent years. State regulators in 2006 approved a process change that allowed DuPont to exploit new markets for the super-white coatings made in Delaware.

Edge Moor employed about 875 workers during its high point in the mid-1970s. Operations were complicated in the late 1990s, when DuPont and federal regulators found that some processes at Edge Moor produced waste tainted with dioxins. The company has since drastically reduced the output of the waste.